

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLETE JURISDICTION**

**CRIMINAL APPEAL CASE NO. HAA 36 OF 2012**

**BETWEEN** : (1) **MEREONI VOSITA**  
(2) **LAISANI MERE**  
(3) **LITIA NAIVALU**

**AND** : **STATE**

**Counsels:** : **Appellants in Persons**  
**Ms. Kimbly Semisi for State**

**Date of Judgment :** **10<sup>th</sup> May 2013**

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**JUDGMENT**

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1. The appellants above named were charged with 1 count of Theft punishable under Section 291 of the Crimes Decree. All 3 appellants pleaded guilty and admitted the summary of facts.

I reproduce the summary of facts for easy reference.

**1<sup>st</sup> Count:** On the 30<sup>th</sup> day of May, 2012 at Martintar, Nadi Mereoni Vosita aged 42 years Unemployed of Puna Place, Drasa Vitogo stole 2x underwater Toshiba Torch valued \$150.00.

**2<sup>nd</sup> Count:** Laisani Mere 24 years Unemployed of Namoli Village Lautoka stole 1x underwater Toshiba Torch valued \$75.00.

**3<sup>rd</sup> Count:** Litia Naivalu 34 years Unemployed of Waiyavi Stage 2, Lautoka stole 1x Portable DVD Player valued \$395.00 the property of Universal Electronics.

2. The learned magistrate after giving reasons had imposed the following sentence:
  - (a) First appellant 13 months imprisonment with 7 months non parole period.
  - (b) Second appellant 17 months imprisonment with 11 months non parole period.
  - (c) Third appellant 19 months imprisonment with 13 months non parole period.
  
- (3) The 1<sup>st</sup> appellant submits following grounds of appeal:
  1. This is my first conviction.
  2. I am sincerely remorseful for my actions.
  3. I entered into an early guilty plea thus saving the Courts time.
  4. All stolen items have been recovered.
  5. I am a single parent with four children, of which three are attending school, 17 years, 14 years, 8 years and my youngest child is three (3) months old.
  
- (4) The 2<sup>nd</sup> appellant submits 1 ground of appeal namely the sentence is too harsh and excessive.
  
- (5) The 3<sup>rd</sup> appellant submits following grounds:
  - I. Sentence was too harsh.
  - II. I have 2 children both are 3 years old.
  - III. All the items were recovered.
  - IV. My remand period was not taken into consideration.
  - V. Prison is overcrowded.
  
- (6) Considering the grounds of 1<sup>st</sup> appellant I find her 1<sup>st</sup> ground was incorrect and misleading the Court. The appellant was convicted at Magistrate Court of Sigatoka for Theft on the 22<sup>nd</sup> February 2011. She had committed this offence while she was on suspended term.

This ground of appeal fails on its own merits further the state is advised to take appropriate action to activate the suspended sentence.

- (7) The 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal were remorseful and early plea. The learned magistrate in paragraph No. 10 of his sentencing remarks had considered reduced 8 months for the above reasons. Hence I do not find any reason to interfere with this sentence. This ground of appeal fails.
- (8) The next ground of appeal is that all stolen items were recovered. The learned magistrate in his sentencing remark has considered and given due consideration in commencing your sentence. Hence I do not find any merit in your appeal.
- (9) The next item is not a ground of appeal. It is a submission to mitigate your sentence which the magistrate considered and given generous discounts.
- (10) The 2<sup>nd</sup> appellant has submitted her sentencing was too harsh and excessive. Considering the nature of the offence and your previous 9 convictions out of which 8 are similar nature does not warrant any lenient sentence. In my view the trial magistrate is very generous and sympathetic in imposing such a lenient sentence.
- (11) The 1<sup>st</sup> ground of appeal of the 3<sup>rd</sup> appellant is that the sentence is too harsh. You have 22 previous convictions, all of them are theft. Except one robbery with violence. In fact you have a suspended sentence imposed on you on the 2<sup>nd</sup> of September 2010 by the Magistrate of Ba, should be reactivated. I direct the State to take action to reactivate the said suspended sentence.

For the reason stated on your 1<sup>st</sup> ground of appeal fails on its own merits.

- (12) The fact that you have 2 children was considered as mitigating factor by the Magistrate. Hence there is no merit to be argued in this Court this ground also fails.
- (13) The next ground of appeal was all the items were recovered. The Magistrate had considered this fact and commenced his sentence at a very lower level. Hence this ground of appeal also fails on its own merits.
- (14) The next ground of appeal was that the period in remand prison was not taken into consideration. In paragraph No.10 of the sentencing remark the Magistrate has considered and reduce 3 months for the period spent in remand custody. This ground is misleading therefore this ground is dismissed.
- (15) The last ground of appeal was that prison is over crowded. This is an administrative matter for the prison authority to consider. I am informed that the Judiciary, Ministry of Justice, Department of Correction Services and other relevant authorities are looking in to this matter. This Court is unable to make any order at this juncture. All grounds of appeal of all 3 appellants failed. Hence I dismiss the appeal.
- (16) Appeal dismissed.

**S. Thurairaja**  
**Judge**

**At Lautoka**  
**10<sup>th</sup> May 2013**

**Solicitors: Appellants appeared in Persons**  
**The Office of the Director of Public Prosecution for State**