

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO.: 01 OF 2013

BETWEEN: ILIESA LOTAWA

APPELLANT

AND: STATE

RESPONDENT

Counsels : Mr Kumar for the Appellant
Mr F Lacanivalu for the Respondent

Date of Judgment : 04 September 2013

JUDGMENT

1. The appellant was charged before the Nadi Magistrate Court on two counts of Theft contrary to Section 291 (1) of the Crimes Decree No.44 of 2009.
2. According to summary of facts this crime was committed at the White House Night Club on 29th September 2012. Appellant had stolen the back pack bag of Mr. Michael Thomas, Photographer from New Zealand, which contained his Cannon camera with two lens valued at \$1500, another Cannon camera valued at \$1200, mobile phone valued at \$1000. Further appellant had stolen a Lenovo Laptop of Simon Parry a Director from Briton.
3. Both complainants were tourists. As correctly found out by the Magistrate this is opportunistic stealing.

4. Appellant pleaded guilty to both charges, admitted the summary of facts and was sentenced on 15.10.2012 for a period of 18 months with a non parole period of 12 months.
5. He had filed this appeal against the sentence on 23.10.2012.
6. The grounds of appeal are as follows:
 - (i) The learned Magistrate failed to consider that the appellant is a first offender,
 - (ii) The sentence is manifestly harsh and excessive,
 - (iii) The learned Magistrate erred in principle to apply in sentencing that
 - (a) Appellant's prompt guilty plea,
 - (b) The gravity of the offence committed does not match the gravity of the sentence at the starting point,
 - (c) The learned Magistrate had regard to inappropriate aggravating factors and disregard that some items were recovered.
7. Both parties have filed written submissions.
8. State in their submissions has stated that the starting point of 20 months was excessive as this was well outside the tariff of 2 to 9 months. However, they have further stated that learned Magistrate had given good reasons for selecting such starting point.
9. Tariff for the offence of Theft was discussed in several cases. In **Saukilagi v State** the Court accepted between 2 to 9 months as tariff for simple theft.

*"The tariff for simple larceny on first conviction is 2-9 months (**Ronald Vikash Singh v. State** HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment (**Isoa Codrokadroka v. State** Crim. App. HAA 67 of 2002) and 3 years imprisonment have been upheld by the High Court (**Sevanaia Via Koroi v. State** Crim. App. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and the defendant. The method of stealing is also relevant."*

10. Given the nature of the offence committed and the value of the items stolen the starting point adopted by the Magistrate (20 months) was quite appropriate. The Magistrate fell in to error however, by considering those same aggravating factors the

subject of additional 15 months imprisonment. This is punishing the offender twice for the same reasons. I would remove the aggravating features component of the sentence.

11. For the early guilty plea I deduct 6 months and further 5 months for the other mitigating factors namely:

- (i) The appellant is a first offender,
- (ii) He was 24 years old at that time,
- (iii) Married with one child who was 2 months old,
- (iv) Assisted in recovery of productions.

12. Now the appellant's sentence is 9 months. He had already served this sentence. Thus Prison Authority is directed to release the appellant forthwith.

13. 30 days to appeal.

Sudharshana De Silva

JUDGE

**At Lautoka
04th September 2013**

**Solicitors for the Appellant: Legal Aid Commission
Solicitors for the Respondent: Office of the Director of Public Prosecution**