

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 64 of
2018 (on Appeal from Ba CC168
of 2018)

MOHAMMED SHEIK TAJ

Appellant

vs

STATE

Respondent

Miss V. Diroi (L.A.C.) for the Appellant
Miss Latu for the State

Date of Hearing : 8 November 2018
Date of Judgment : 13 November 2018

JUDGMENT

- 1.] On the 15th August 2018 at the Magistrates' Court at Ba, the Appellant was convicted on his own plea of one count of theft contrary to section 291(1) of the Crimes Act 2009.
- 2.] He admitted to having stolen 4 goats to a total value of \$1,200.
- 3.] He was sentenced to a term of imprisonment of 12 months.
- 4.] He now seeks to appeal that sentence on the grounds that it was a sentence beyond established tariffs and as a result is harsh and excessive.

5.] **Facts:**

In the early part of this year, 4 nanny goats came of their own accord on to the farm land of the appellant. He had no idea who they belonged to and took no steps to identify the owner. He assumed

ownership of the goats and even exchanged one for another belonging to his neighbour.

- 6.] The goats actually belonged to another neighbour, his relative who happened to see the goats on the appellant's property. The Police were informed and the appellant was arrested and charged. He admitted the offence in his cautioned interview.

7.] The Sentence

The learned Magistrate noted the mitigation features in favour of the Appellant which were:

- Guilty plea and remorse
 - Clear record
 - Co-operation with the Police
 - Recovery of the goats
 - Complainant's forgiveness.
- 8.] He also noted that an aggravating feature was the benefit he received from the theft.
- 9.] After correctly identifying the maximum penalty for the offence (10 years), he went on to discuss the authorities setting the tariff for theft and then fell into error by finding that the tariff for the offence was 4 months to 3 years imprisonment. He based his sentence on this erroneous finding and sentenced the Appellant to 12 months' immediate custodial sentence.

10.] Sentencing for Theft

This Court set the tariffs for the offence of theft in the case of *Ratusili* (2012) FJHC 1249 after an analysis of previous decisions up until that time.

- It was decided that the sentencing range for a first offence of simple theft should be in the range of 2 to 9 months.
- Any subsequent offence should attract a penalty of at least 9 months
- Theft of large sums of money and thefts in breach of trust whether first offence or not can attract sentences of up to three years.
- Regard should be had to the nature of the relationship between thief and victim
- Planned thefts will attract greater sentences than opportunistic thefts.

11.] In the case of Waqqa HAA017.2015, Perera J. purported to increase the tariff to be between 4 months to 3 years imprisonment and observed that *"it is no longer the law in Fiji to recognize a different sentence or a tariff for theft for offenders with previous convictions"*. He based this observation on the removal from legislation of the different classes of theft offences previously included in the old Penal Code. This however does not explain why the lower end of the band was increased by the learned Judge, an increase that severely prejudices the first time opportunistic thief who previously could in the appropriate circumstances be punished by a suspended sentence or a sentence of a couple of months' imprisonment.

12.] This Court declines to follow that stated tariff of Perera J. and would endorse the previous decision of the Court in Ratusili (*supra*).

13.] This Court does find in the premises that the sentence passed below is harsh and excessive and would proceed to re-sentence the Appellant pursuant to s 256(2) of the Criminal Procedure Act 2009.

14.] The new sentence

This is an unusual fact situation. The Appellant did not plan to steal the goats; they just wandered onto his land. That however should not have prevented him from attempting to identify the owner of the goats or to report the matter to the authorities.

15.] I accept the Magistrates list of mitigating feature, and high among them must be his cop-operation with the Police and his early guilty plea.

16.] I do not accept the Magistrates' stated aggravating feature of benefitting from the crime. Every thief benefits in some way from his crime. It is an intrinsic part of the offence.

17.] For this first opportunistic theft I take a starting point of 6 months imprisonment.

18.] Theft of farm animals is an aggravating feature. The backbone of the economy of Fiji after tourism is the agricultural sector and every effort must be made to protect the rights and property of those who play an integral part in this industry. The Courts should pass harsher penalties on those who would seek to interfere with farmers' property.

- 19.] I add a further 6 months to the sentence for that aggravating feature.
- 20.] For the Appellant's remorse, the recovery of the goats and the complainant's forgiveness, I deduct 3 months bringing the interim total sentence to one of 9 months imprisonment.
- 21.] The Appellant has a clear record and entered a plea of guilty at a very early stage. It was a opportunistic assumption of ownership which he did nothing to bring about. The sentence of 9 months is suspended for a period of 12 months. .
- 22.] The appeal against sentence is allowed.
- 23.] The appellant has already served nearly 3 months in custody and he is to be released immediately to continue to serve his suspended sentence.



.....
P.K. Madigan
Judge
High Court Lautoka
13th November, 2018