

TOMASI TURUTURUVESI v STATE

HIGH COURT — CIVIL JURISDICTION

5 SHAMEEM J

5, 23 December 2002

[2002] FJHC 190

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Criminal law — sentencing — appeal against sentence — whether sentence was harsh and excessive — sentence for house breaking entering and larceny — suspension for a young or first offender.

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Appellant was convicted of House Breaking Entering and Larceny. He had 27 previous convictions most of which were for offences of Burglary and Larceny. He was sentenced to 2 years' imprisonment to run consecutive to his current prison term. He appealed against the sentence on the grounds that the learned Magistrate failed to give sufficient weight to the guilty plea and other mitigating circumstances and that the 2-year term was harsh and excessive.

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Held — (1) In this case the Appellant has 27 previous convictions; the items stolen were not recovered because the Appellant sold them and benefitted from his crime. The offence is considered serious by the courts and the community. In the circumstances, the sentence is neither wrong in principle nor manifestly excessive.

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(2) The tariff for House Breaking Entering and Larceny is between 18 months and 3 years' imprisonment.

Appeal dismissed.

Cases referred to:

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Lepani Varani v State Crim App 33/1998; *Lutu Cevanibau v State* (1990) Crim App 57/90; *Mosese Naso v State* Crim App 35/98; *Saula Kalokalodravu* Crim App 69/2000, cited.

Appellant in person

P. Bulamainivalu for the State

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Judgment

Shameem J. The Appellant was convicted, on his plea of guilty of the following offence:

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Statement of Offence

House Breaking Entering and Larceny: Contrary to section 300(a) of the Penal Code Cap

Particulars of Offence

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Tomasi Turuturuvesi on the 11th day of February 2002 at Lokia, Rewa in the Central Division, broke and entered the dwelling house of Anjila Wati d/o Dip Singh and stole from therein three gold sovereigns valued at \$450, one gold chain valued at \$250, one gold ring valued at \$80, one Lee trousers valued at \$37, one camera valued at \$50, one black jacket valued at \$50, and cash \$120, to the total value of \$1037. the property of Anjila Wati d/o Dip Singh.

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The facts were that on the 11th of February 2002, the Complainant left the house and went to Suva to shop. When she returned at 3 pm, she found that her house had been broken into by the ripping of the floorboards. The items specified

in the charge were missing. The Appellant was found after police investigations identified him as a suspect. He admitted the offence to the police and was charged. He had sold the stolen items at the Suva market. These facts were admitted, as were 27 previous convictions most of which were for offences of
5 Burglary and Larceny. He was sentenced to 2 years' imprisonment to run consecutive to his current prison term.

The Appellant appeals against sentence on the grounds that the learned Magistrate failed to give sufficient weight to the guilty plea and other mitigating circumstances, and that the 2-year term was harsh and excessive.

10 State counsel opposes the appeal saying that the tariff for this offence is 18 months to 3 years' imprisonment, and that the Appellant was not entitled to any leniency in the circumstances of the case. He referred to a number of authorities to support his submissions.

In the case of *Lutu Cevanibau v State* (1990) Crim App 57/90, Fatiaki J
15 reduced a sentence of 3 years' imprisonment for an offence of House Breaking, Entering and Larceny, to 18 months' imprisonment on the ground that the magistrate had failed to indicate reduction for mitigating circumstances. In *Lepani Varani v State* Crim App 33 of 1998 a sentence of 12 months' imprisonment was set aside by Pathik J and substituted with a suspended
20 sentence on the ground that the appellant was a young first offender. In *Mosese Naso v State* Crim App 35/98 Pathik J reduced a term of 2 years' imprisonment, to 18 months, for Shop Breaking, Entering and Larceny on the ground that the appellant was a young first offender, and on the ground that his accomplices had
25 received lesser terms. In *Saula Kalokalodravu* Crim App 69/2000, I upheld a term of 3 years' imprisonment for an offence of Housebreaking, Entering and Larceny, committed at the height of the political crisis.

On the basis of these authorities, I accept that the tariff for House Breaking Entering and Larceny to be between 18 months and 3 years' imprisonment, the question of suspension being reserved for the young offender, or first offender.

30 In this case the Appellant has 27 previous convictions, the items stolen were not recovered because the Appellant sold them and benefitted from his crime, and the offence is one which is considered serious by the courts and the community. In the circumstances, the sentence is neither wrong in principle nor manifestly excessive. This appeal is dismissed.

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Appeal dismissed.

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