

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal appeal No. 58 of 1977

MANUELI NAIKUREKURE Appellant

v.

REGINAM Respondent

JUDGMENT

The appellant was, with three others, charged with burglary and escaping from lawful custody. He pleaded guilty and was sentenced by the Magistrate's Court Suva to 9 months' imprisonment on each count, the two sentences to be served consecutively. He appeals against these sentences on the ground that they are excessive.

With regard to the offence of burglary, however, one of his grounds is,

"1. I did not commit the said offence as the police has charged me for."

The appellant is unrepresented here as he also was at the trial.

Learned counsel for the Director of Public Prosecutions has drawn my attention to this Court's judgment in D.P.P. v. Solomon Tui (No. 2 of 1975) and states that he cannot support the appellant's conviction on the burglary count, despite the appellant's plea of guilty.

The charge was framed as follows:

" Statement of Offence

BURGLARY: Contrary to Section 332(a) of the Penal Code Cap. 11.

Particulars of Offence

JOSUA RALULU, JOSALIA RALULU,  
MANUELI NAIKUREKURE and MIKKA TUBUNA,  
on the 6th day of May, 1977 at Lami  
Suva in the Central Division, broke  
and entered by night the Dwelling house  
of INOKE BULA and stole four trousers  
valued at \$14.00, one belt valued at  
\$2.00, 2 tin of fish valued at 88 cents  
and 2 onion valued at 12 cents to the  
total value of \$17.00 the property of  
said Inoke Bula. "

As in the case of Solomone Tui (supra)  
the appellant was charged only with burglary,  
not with larceny. The learned Chief Justice in  
the case of Solomone Tui, said:

"In the second place, a vital ingredient  
of the offence in question, namely an  
intent to commit the felony of larceny,  
has been entirely omitted from the  
charge. And in the third place, although  
the particulars of the offence allege  
that the respondent stole various items  
from the dwelling house, he has not been  
charged with committing the offence of  
larceny in a dwelling house contrary to  
section 302 of the Penal Code to which  
these particulars relate."

The charge in that case was regarded as  
fundamentally defective and the conviction was  
quashed.

Learned counsel submits that the law as  
stated in Solomone Tui is binding on the  
Magistrates' Courts and he cannot, therefore,  
support the conviction. I accept his submission.  
The conviction on count 1 is quashed and the  
sentence of 9 months' imprisonment set aside.

The appellant's appeal against sentence  
on count 4 is dismissed.

(Sgd.)

(G. Mishra)  
Acting Chief Justice

Suva,

8th July 1977