

Between:

1. MOHAMMED KHALIL s/o MOHAMMED TAKI
2. VIJAY SINGH s/o BHUP SINGH

and

REGINAM

JUDGMENT

On the 2nd February 1978 at Labasa Magistrates Court the first appellant was convicted on his own plea of larceny in a dwelling house contrary to section 302(1) of the Penal Code and the second appellant was convicted on his own plea of receiving stolen property (being the proceeds of the theft) contrary to section 347(1)(a) of the Penal Code and each appellant was sentenced to three years' imprisonment.

The appellants have appealed against sentence as being harsh and excessive.

In addition they sought to appeal against conviction on the ground that they pleaded guilty as a result of undue influence and misrepresentations made by police officers, in support of which the second appellant swore an affidavit prepared by his solicitors containing further and better particulars. At the hearing no attempt was made by counsel to pursue this, as it is well established that allegations of this sort do not constitute grounds for appeal.

Section 290(1) of the Fiji Criminal Procedure Code specifically provides that no appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on such plea by a magistrates' court, except as to the extent or legality of the sentence. This provision is in pari materia to section 348(1) of the Kenya Criminal Procedure Code in regard to which it has been held that,

so long as a plea of guilty is unequivocal and contains no ambiguity, an appeal against conviction does not lie (R. v. Wakelin (1951) 18 E.A.C.A. 185). The same principle applies in England; and once a case has been completed by a trial court, by sentence or other final adjudication (S. v. Recorder of Manchester (1971) A.C. 481), then so long as the plea of guilty was unequivocal, the accused fully understood the charge to which the plea of guilty was entered, and nothing took place before the trial court to cast any doubt on the plea, no court has jurisdiction to entertain an application for a change of plea (R. v. Marylobone Justices (1971) 1 All E.R. 1025).

For these reasons this purported ground of appeal was not entertained.

As to sentence, the first appellant entered the house of the complainant and removed a box containing money which he forced open and the contents of which he subsequently gave to the second appellant who was aware of the theft.

The first appellant is seventeen years of age and the second appellant twenty years of age and neither of them has any previous convictions.

In the circumstances the sentences of three years' imprisonment are excessive and are quashed. In substitution therefor each appellant is sentenced to twelve months' imprisonment with effect from the 2nd February 1978.

Sgd. Clifford H. Grant
Chief Justice

Suva,
19th May 1978.