

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

243
000240

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No.57 of 1978

BETWEEN:

R E G I N A Appellant

and

1. JAGDISH s/o Valaidan
2. SATISH KUMAR s/o Valaidan
3. AZAD ABADAN s/o Abadan
4. KALIM SHAH s/o Abbas Ali Respondents

Mr. Jennings, Crown Counsel for the Appellant
Mr. M.T. Khan, Counsel for the Respondents.

JUDGMENT

This is the D.P.P's appeal against terms of 9 months' imprisonment imposed by a magistrate on four accuseds. The sentences were suspended in each case for 2 years.

They were charged with serious offences namely housebreaking and stealing contrary to section 333(a) of the Penal Code and throwing an object ^{contrary} to section 97 A of the Penal Code.

The facts as found by the learned magistrate and pleaded to by all four accuseds showed that about 1.30 A.M. they arrived at the complainant's house and broke into a shed in which the complainant kept her goat. The complainant, a widow, of 32 years living with her 16 years old son heard the intruders. She shone a torch through her window and in its light she recognised accuseds 1 & 2 as persons she knew. Although discovered in this manner the accuseds continued to break into the shed and stole the goat which they put into the car as the complainant looked on. For good measure they stoned her house before departing.

Crown counsel, Mr. Jennings, has properly pointed out that this was an arrogant and cowardly crime in

that they committed it in view of the complainant knowing she knew them and knowing she was too helpless and unprotected to resist. On the face of it the crimes were of a nature which required an immediate severe sentence of imprisonment.

As sometimes happens the magistrate had some personal knowledge of the background of the parties involved. It appears that the complainant had a daughter who had been courting Respondent No.1, Jagdish, and the couple wished to marry. The complainant's relatives objected to the match on a racial or national basis. One belonged to N.India and the other to S.India. It appears that the attack on the complainant was one of spite, malice, or revenge. Although this cannot in any way excuse a criminal act it eliminates the ordinary anti social reasons behind many such crimes. It does suggest that the accused persons were not launching themselves out into a life of crime but were motivated by some other cause.

The learned magistrate stated that he had tried to pour oil on these troubles waters and that any punitive measure by way of immediate imprisonment would probably revive the antagonism and may aggravate it. As counsel, Mr. M.T. Khan, for the appellants 1 & 2 has pointed out the suspension of sentence may well act as a deterrent to any further open outbreaks of hostility.

Where a magistrate has taken a course which on the face of it is perhaps unusually lenient but gives cogent and acceptable reasons therefore the Supreme Court will be slow to interfere and I do not propose to convert the terms or any of them to immediate imprisonment.

Usually such offences invite immediate imprisonment where the offenders appear to have been motivated by a desire for personal gain and indicate some criminal intent to pursue a life of crime.

The attitude of the courts is to deter would be offenders from being led to believe that the risk of serious punishment on being caught is so slight as to be regarded as a justifiable risk attached to criminal activities.

In my view the offences in this case do not fall within that category. However, I do regard the terms of imprisonment as being much too lenient and the learned magistrate erred in not differentiating between the accuseds who pleaded guilty at an early stage i.e. accuseds 1 & 2 and the other two who waited until the prosecution had adduced very emphatic evidence pointing to their guilt before terminating their trial by changing their pleas to guilty. In imposing similar sentences he was not allowing for the genuine remorse displayed by accuseds 1 & 2.

Accused 1 pleaded guilty but when at first seen by the police denied any implication.

Accused 2 made an admission to the police and he gave them every assistance. In addition he also gave evidence as a prosecution witness at the trial of accuseds 3 & 4. On the two I consider that accused 2 has more to be considered in his favour than accused 1.

Accused 3 has no previous convictions but his first convictions are for very serious offences. He did not help the police nor show any remorse in the form of an early plea of guilty.

Accused 4 has a criminal record for breaking and entering but his two convictions were recorded on the same day in 1964. He has no conviction for the past 14 years apart from a recent one for disorderly conduct.

Apart from losing a goat worth \$50.00 the complainant also suffered damage to her shed where the goat was kept. It would be in keeping with the

magistrate's approach if the complainant were to be compensated for that damage.

I alter the sentences as follows:-

Accused 1 - JAGDISH s/o Valaidan

Count 1 - 18 months' imprisonment suspended for 2 years.
Count 11 - 6 months' imprisonment suspended for 2 years.
No alteration on the order for compensation.

Accused 2 - SATISH KUMAR s/o Valaidan

Count 1 - 12 months' imprisonment suspended for 2 years.
Count 11 - 6 months' imprisonment suspended for 2 years.
The order for compensation is approved.

Accused 3 - AZAD ABADAN s/o Abadan

Count 1 - 21 months' imprisonment suspended for 3 years.
Count 11 - 6 months' imprisonment suspended for 2 years.
To pay \$25.00 compensation within 14 days of the date hereof into the magistrate's court at Rakiraki.

Accused 4 - KALIM SH H's/o Abbas Ali

Count 1 - 24 months' imprisonment suspended for 3 years.
Count 11 - 6 months' imprisonment suspended for 2 years.
To pay \$25.00 compensation within 14 days of the date hereof into the magistrate's court at Rakiraki.

LAUTOKA,
7th day of July, 1978

(sgd.) J.T. Williams,
JUDGE