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IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 123 of 1980

000127

Between:

OSEA ROQICA

Appellant

and

REGINAM

Respondent

Mr. A. Singh for the Appellant

Mr. R. Lindsay for the Respondent

JUDGMENT

On 14th November 1980 appellant was convicted on his own plea by the Suva Magistrate's Court on five counts in the charge and sentenced as follows:

First Count: burglary - 18 months' imprisonment

Second Count: larceny from dwelling house - 18 months' imprisonment

Third Count: larceny - 18 months' imprisonment

Fifth Count: larceny from dwelling house - 2 years' imprisonment

Sixth Count: housebreaking etc. - 3 years' imprisonment

(all to be served concurrently).

With regard to the first and third counts appellant was charged with three other accused (Accused 2, 3 and 4) all of whom also pleaded guilty and were sentenced as follows:

Accused 2: first count - 18 months' imprisonment
second count - 18 months' imprisonment
third count - 18 months' imprisonment

(all to be served concurrently).

Accused 3: first count - 18 months' imprisonment
second count - 18 months' imprisonment
third count - 18 months' imprisonment
(all to be served concurrently).

Accused 4: first count - 21 months' imprisonment
second count - 21 months' imprisonment
third count - 21 months' imprisonment
(all to be served concurrently).

The first and second counts were committed on 12th November 1980 and involved theft from private homes in the Domain of items worth \$198 and \$373 respectively.

Third count was committed on 2nd November 1980 and involved theft also from a private home in the Domain of items worth \$107.

Fifth count was committed on 1st October 1980 and involved theft also from a private home in the Domain of items worth \$163.

Sixth count was committed on 19th August 1980 and involved theft also from a private home in the Domain of items worth \$437.

In this appeal appellant complains that the overall sentence he received is harsh and excessive in comparison to the sentences received by his accomplices.

All accused are young. Appellant's personal record appears to be better than the others and certainly so in comparison to that of accused 4 who has eight previous convictions for dishonesty. Yet accused 4 received a much lighter sentence than appellant. Appellant has one minor previous conviction which must be disregarded for purposes of the present charges.

All items in the second and third counts have been recovered and in the first count only a pair of eye-glasses has been recovered.

In view of the fact that appellant's past record is nowhere as nearly as bad as that of accused 4 it was wrong in principle that appellant should be worse off by fifteen months than accused 4 in the sentences they each received. Even the fact that appellant accounted for two additional offences going back as far as August 1980 cannot in my view justify such wide disparity in their treatment. I am satisfied that in the circumstances disclosed both accused should be placed on the same footing as regards their sentences. Accordingly the appeal against sentence will be allowed.

The sentences imposed on appellant in respect of the 5th and 6th counts are set aside and in lieu thereof a sentence of twenty one months' imprisonment on each count is substituted to be served concurrently with the sentences on the 1st, 2nd and 3rd counts.

(T.U. Tuivaga)
Chief Justice

Suva,
6th February 1981.