

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
CRIMINAL APPEAL NO. 32 OF 1981

Between:

TAWAKE DRANILAGILAGI

APPELLANT

v.

R E G I N A M

RESPONDENT

Appellant in Person.

Mr. M. Raza for the Respondent.

J U D G M E N T

The appellant was on the 28th day of August 1980 convicted by the Magistrate's Court, Tailevu, of killing an animal with intent to steal, contrary to section 322 of the Penal Code and sentenced to two years imprisonment. He appeals against conviction and sentence.

As to the appeal against conviction there is no merit in the appeal. The appellant was seen by his cousin in company with two other persons killing a bullock belonging to one Sher Singh and chopping it into pieces. The Magistrate accepted the evidence of that witness. There was clear evidence that the appellant killed the animal with intent to steal the meat.

The appeal against conviction fails.

As regards the sentence the other two persons involved in the offence were tried before the appellant. They were convicted and sentenced to 18 months imprisonment

each.

I do not know if those two persons had any prior convictions but the appellant has five previous convictions, only two of which involve dishonesty. The appellant complains that his two companions were sentenced to 18 months imprisonment while he was sentenced to 2 years.

The Magistrate was aware that the appellant's two companions were sentenced to 18 months imprisonment for being involved in the offence as they were called as witnesses and one of them disclosed the sentence they received. There is nothing in the Magistrate's judgment to indicate why he considered the appellant should have received a more severe sentence than his two companions.

The appellants two companions were as stated convicted earlier but where the Magistrate trying the appellant is made aware of the punishment meted out to other persons involved in the offence the same principles should be followed as if all persons involved were convicted together.

D.A. Thomas in Principles of Sentencing at page 64 in the chapter dealing with Disparity of Sentence states:

" Where two or more persons are convicted together of the same offence, the Court requires as a general rule that the sentence passed on each offender should show a proper relationship to the sentence passed on the others. If all relevant considerations are the same in each case, similar sentences should be passed. Discrimination between the offenders must be justified by some factor peculiar to the offender. There must be either a difference in respective responsibility for the offence, or some mitigating factor which applies in one case and not the other."

There is nothing in the record which would account for the disparity of the sentence. The only eye witness to the killing saw three persons including the appellant killing the animal and there was nothing in his evidence to indicate the appellant was the ringleader.

In isolation the sentence was not excessive but when the sentences imposed on the other two participants in the offence are considered, the appellant's sentence appears discriminatory and contrary to the principles of sentencing.

The appeal against sentence is allowed. The sentence of two years imprisonment is quashed and in substitution thereof a sentence of 18 months imprisonment is imposed with effect from the 28th August, 1980.



(R.G. KERMODE)

J U D G E

S U V A,

17 JULY, 1981.