

Appellate Jurisdiction

000197

Criminal Appeal No. 5 of 1984

Between:

MOHAMMED FEROZ
F/N NUR MOHAMMED

Appellant

and

REGINAM

Respondent

Mr. Anil Singh for Appellant

Mr. J. Sabharwal for Respondent

JUDGMENT

On 2nd December 1983 in the Suva Magistrate's Court appellant was convicted on his own plea of office breaking, entering and larceny contrary to section 300 of the Penal Code and was sentenced to eighteen months' imprisonment.

This appeal is against sentence on the ground that it was unreasonable, harsh and excessive having regard to all the circumstances of the case.

The facts which are set out clearly in the record were as follows:

"On 25.4.83 the accused was employed as a bowzer attendant by the Edinburgh Drive Service Station. On 24.4.83 accused with another planned to break into the Service Station and steal. On 25.4.83 while the accused was on duty, as bowzer attendant at night, the other person came up to him at 2 a.m. and advised the accused of the plan for the theft. The other person had a pinch bar to break the padlock. They waited till 5 a.m. till another employee left for the Mosque and the other person broke the rear door of the Service Station, pulled out a safe containing the cash of \$1968.59. He then informed the accused who was acting as "watchman" that he had brought the safe out. He then closed the door. The other person hired a taxi came there loaded the safe into the taxi and took it away to Nasinu. In the morning when the

owner of the Service Station arrived, he asked this accused whether there was any incident. Accused denied that there was any incident. The owner found the padlock broken and the safe missing. He then reported the matter to the police. In the meantime the other person who had taken the safe to Nasinu with the help of his brother had cut open the steel safe, took out the cash and burnt the other documents. That other person then dug a hole and buried the safe. The police acted on information searched the house of the other person dug out the safe and recovered \$508.95 cash from the house of that person out of the \$1968.59 which was stolen. The accused was interviewed by the police on 25.4.83 under caution and when charged he admitted that he acted as a "watchman" but did not receive any money."

At the hearing of the appeal complaint was made that the learned Magistrate did not give any reasons why he felt an immediate custodial sentence was warranted in this case.

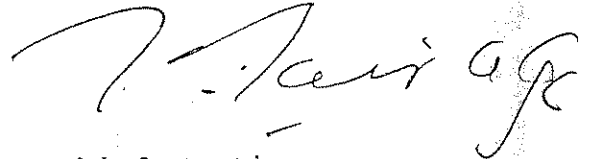
Counsel for appellant has submitted that the appellant is a young man of eighteen years and this was his first offence. He also said that appellant was prevailed upon and influenced by the other person in the crime who was much older than him and who in a separate trial was given two and half years' imprisonment while his brother received a fine and a suspended sentence. It was also submitted that the appellant did not benefit in any way from the theft which was shared between the two brothers.

In this Court's view there were strong mitigating factors which ought to have been examined a little more closely. These were the plea entered by appellant, his age, his hitherto clean record and the fact that he may well have been an unwilling participant in the criminal enterprise. It is also accepted that he was a double loser in the enterprise. Not only did he not receive any share of the money stolen but also his employment as may be expected was terminated.

All in all I think this is a case where appellant who is at an age which makes him easily vulnerable

to devious influences from a person of dominant or stronger personality should be given a chance to reform himself. In these circumstances I am satisfied that in the long run it would not be in the best interests of appellant nor that of the community for him to remain incarcerated. The main culprit has been dealt with.

For the reasons given the appeal is allowed. The sentence imposed in the Court below is set aside and in lieu thereof a sentence of twelve months' imprisonment suspended for two years is substituted.



Chief Justice

Suva,

2nd March 1984.