

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Appellate Jurisdiction

Criminal Appeal No. 68 of 1983

BETWEEN : MOHAMMED HAKIK s/o Mohammed Roshan Appellant

A N D : R E G I N A M Respondent

Miss V. Patel Counsel for the Appellant

Mr. M. Raza, Principal Legal Officer Counsel for the Respondent

J U D G M E N T

The appellant was convicted by the magistrate's court at Nadi of cattle stealing and was sentenced to 2 years and 6 months' imprisonment. He appeals against conviction.

The learned Counsel for the appellant Miss Patel submits that the appellant aged 20 years was a first offender and in all the circumstances the sentence was excessive.

The appellant was indeed a first offender: he had no previous convictions of any kind. The animal stolen, referred to in the learned trial magistrate's judgment as a "bull", was in fact a calf, worth \$100, which was recovered so that the complainant suffered no loss. The learned trial magistrate in passing sentence observed that,

"Cattle theft in Nadi has recently reached quite epidemic proportions. The P.W.1 was a good farmer, tethered his cattle at home overnight, did not contribute to the theft by his negligence in letting cattle stray as do many uncaring farmers. The vulnerability of cattle to theft especially by night cannot be over-emphasised."

I cannot see that the latter two sentences were relevant or that contributory negligence might affect sentence. The learned trial magistrate did not record that he took into account the matters which I have enumerated above, which I consider are relevant to sentence. In the absence of such record I can make no assumptions in the matter unfavourable to the appellant. I consider in particular that a first offender is entitled to leniency and that it was a misdirection by way of omission for the learned trial magistrate not to have taken such into account. While the sentence imposed does not come to me with a sense of shock this Court is nonetheless in the circumstances at large in the matter of sentence.

The appeal is allowed. The sentence is set aside and in all the circumstances I substitute therefor a sentence of one year and six months' imprisonment with effect from 13th September, 1983.

Delivered In Open Court At Lautoka This 6th Day of April, 1984



(B. P. Cullinan)

Judge

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