

HOLA, TOME AND LAI -v- REGINAM

High Court of Solomon Islands

(Muria ACJ)

Criminal Case No. 15 of 1992

Hearing: 10 February 1993

Judgment: 10 February 1993

A. Radclyffe for the Appellants

F. Mwanasalua, DPP, for the Respondent

MURIA ACJ: On 10 February 1993, I allowed this appeal and I said I will give my full reasons later. That I now do so.

The appellants were charged with the offence of Housebreaking and were convicted by the Central Magistrate's Court and were each sentenced to 9 months imprisonment. Each appellant was however to serve only 3 months each, as 6 months of the sentence on each was suspended for one year.

On 5 June 1992, the appellants were granted bail and have been on bail since then. Mr Radclyffe argued that it was wrong to impose a custodial sentence in this case in view of the mitigating factors present, such as the plea of guilty, the youthfulness of the appellant, no previous convictions, co-operation with the police and repayment to the school for the items stolen. In any case, Mr Radclyffe submitted, those mitigating factors should justify the whole of the sentence suspended.

The learned Director did not press against the appeal and helpfully drew the court's attention to what are some of the serious features of burglary and housebreaking. He agreed with Mr Radclyffe that there were compelling mitigating factors in this case. The learned Director further agreed that the sentence imposed here on the appellants was far beyond the gravity of the offences committed.

While I appreciate counsel's submissions in this appeal, there can be no doubt that housebreaking is a serious offence. This is reflective of the fact that the law puts the maximum punishment for such offence at 14 years imprisonment. As such it cannot be said that custodial sentence is wrong in principle in housebreaking cases. What the

appellant must show is there are special circumstances that call for leniency in the sentence imposed.

The argument, implicit in Mr Radclyffe's submission, that youthful offenders must be treated with leniency, cannot be readily accepted in its general tenor. This is so because a plea of youth is no longer a satisfactory answer to serious offences. Custodial sentences may properly be imposed on young offenders in appropriate cases as a measure of deterrence to show disapproval by society of the conduct of the young offenders. The offence of house breaking legitimately falls into this category.

The appellants here broke and entered and stole items from the school building in the village. Those items were said to be school exercise books and an English book, the total value of which was just a little over \$91.00. Although the amount does not sound to be a lot of money, for a village school in Solomon Islands such amount is a treasure, particularly, as not many village schools have easy access to funds. When the appellants stole those items from the Koilovala school, they were in effect depriving those little children of that school of the use of those essential items for their learning. That was also an important factor in this case to be taken into account in sentencing the appellant.

This Court cannot say that the 9 months sentence imposed in this case is wrong in principle.

Having said that, there are undoubtedly special circumstances here that justified a lenient approach to sentencing the appellants. I have already mentioned those circumstances which the learned Director properly conceded as meriting some leniency on the appellants.

Having considered submissions by counsel together with those matters that I mentioned in this judgment, I feel the Court can exercise its discretion and extend to the appellants such leniency as they deserve. That the Court will do so now by suspending the whole of the 9 months imprisonment sentence for one year with effect from 28 May 1992.

Appeal allowed to that extent.

(G.J.B. Muria)
ACTING CHIEF JUSTICE