

IN THE HIGH COURT OF FIJI  
AT SUVA  
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO: HAA 026/2013

BETWEEN : JOPE GORE

APPELLANT

AND : STATE

RESPONDENT

COUNSEL : Mr J Savou for the Appellant  
Mr J Niudamu for the Respondent/State

Date of Hearing : 07/03/2014

Date of Judgment : 10/04/2014

JUDGMENT

- [01] JOPE GORE (hereinafter "the Appellant") Appeals against the sentence of case number 1605/07 filed in the Magistrate Court Nasinu on 19/12/2007. He was charged for one count of **House Breaking with intend to Commit a Felony** contrary to Section 302(2) of the Penal Code Act 17.
- [02] Appellant appearing in person pleaded guilty to the charge and admitted the summary of facts. He has also pleaded guilty to five other cases. (1373/07, 1602/07, 1603/07, 1604/07 and 522/09)

[03] On 29/01/2013 he was sentenced to a prison term of 7 years for File No: 1605/07 with concurrent to File Nos: 1602/07, 1603/07 and 1604/07.

[04] Being aggrieved by the above sentence the appellant has appealed against the sentence imposed in File No: 1605/07.

#### Tariff for the Offence

[05] Madam Shameem J in her appeal judgment in **Masake Ratabua v The State** Crim. Appeal No:026 of 2004S cited **Tomasi Turuturuvesi v State** Crim. App HAA86/2002S stating that the tariff for house breaking entering and larceny was between 18 months to 3 years imprisonment, the question of suspending being reserved for the young first offender.

[06] In the Appeal decision of Madam Shameem J **Epeli Labalaba v State** Crim. Appeal No: HAA 013 of 2005S, reduced a 12 months sentence to 9 months for the offence of School Breaking With Intend to Commit Felony.

[07] Considering the above decisions, in this case File No;1605/07,the learned Magistrate had imposed maximum sentence of 7 years under section 302(2) of the Penal Code, Cap 17 disregarding accepted tariff.

[08] At the hearing the counsel for the Appellant submitted to this court that the Appellant would be satisfied if the sentence passed in File No: 1605/7 is brought under accepted tariff as he is a serving prisoner.

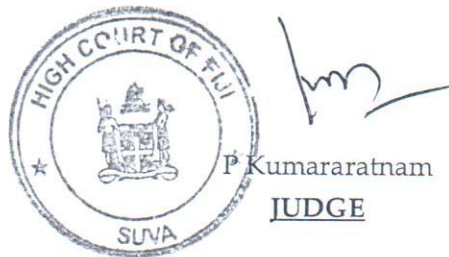
[09] The Respondent did not file any submissions and left the matter be decided by the court.

[10] I agree with the Appellant that the sentence passed in File No: 1605/07 is excessive. Therefore I quash the 7 years imprisonment sentence. Now I proceed to impose an appropriate sentence in File No: 1605/07.

[11] After considering aggravating and mitigating circumstances, I impose 03 years imprisonment concurrent to sentences imposed in File Nos:1602/07,1603/07 and 1604/07.

[12] I further order this sentence of 03 years imprisonment be run concurrent to his present serving term of imprisonment effective from 29/01/2013.

[13] Appellant has 30 days to appeal.



At Suva  
10/04/2014