

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 49 of 2018
(on appeal from Tavua 30 of 2016)

INIA NAIRAVIRAVI

Appellant

V

STATE

Respondent

Miss J. Singh (L.A.C.) for the Appellant
Miss L. Latu for the State.

Date of Hearing : 8 November 2018
Date of Judgment : 16 November 2018.

JUDGMENT

- 1.] On the 15th day of May 2018 in the Magistrates Court at Tavua, the appellant was convicted on his own plea of one charge of theft of 9 yaqona plants to the value of \$500.
- 2.] He was sentenced on the 25th May to a term of imprisonment of 12 months.
- 3.] The appellant appeals that sentence on the grounds that the learned Magistrate based his sentence on wrong application of the law and on unauthorized sentencing practice.

- 4.] The brief facts of the case are that on the 19th January 2016, a farmer of Nadarivatu reported to the Vatukoula Police that nine of his yaqona plants had been uprooted and stolen. Acting on information, the accused was arrested and interviewed under caution. The accused (appellant) admitted to having stolen the plants on the 18th January. He further admitted that he was the nephew of the victim farmer. All of the plants were recovered and restored to the owner.
- 5.] In crafting his sentence the learned Magistrate after reviewing the authorities took a high starting point of 18 months imprisonment, because he observed that theft of crops or livestock is a serious matter “because of the public interest factor involved”. In adding time for the aggravation of breach of trust (uncle), and reducing the sentence for a clear record and guilty plea, he arrived at the final sentence of 12 months. He declined to suspend the sentence because “a deterrent is required in the public interest”.
- 6.] It is unfortunate that the Magistrate lost his way in sentencing in two respects. While citing the oft relied upon case of **Ratusili** HAA011.2012, he then observed that he would prefer to rely on the later case of **Waga** HAA 017.2015 in which Perera J. purported to set a new tariff of 4 months to 3 years imprisonment.
- 7.] As this Court has said very recently in **Mohammed Sheik Taj** HAA 64 of 2018 (13 November 2018), the decision in **Waga** (*supra*) is harsh because it removes the availability of suspended sentences and a few months in custody for the first time petty thief. This Court then and now will not follow that tariff but will rely on the decision in **Ratusili** (*supra*).

- 8.] The second prejudice occasioned to the Appellant in this sentence is that it appears that the accused below was penalized twice for the fact that the items stolen were root crops.
- 9.] In the case of **Filipe Ratusuka and 8 others** HAA 001.2013, Goundar J. observed that farm theft is serious because of the value that the commodities bring to the farmer and the community. .
- 10.] The Magistrate quite properly followed this and adopted it as an aggravating factor but he did it twice, once in picking a very high starting point and in the end by using it as a factor not to suspend the sentence.
- 11.] In the premises, this Court pursuant to section 256 (2) of the Criminal Procedure Act 2009, sets aside the sentence passed below and would sentence the Appellant afresh.
- 12.] For the theft of farm crops, and as a first offender, the Court takes a starting point of 7 months imprisonment. For the breach of trust in stealing his uncle's crops, I add 4 months to that term. From that interim total of 11 months, I deduct 5 months for his plea of guilty (albeit not at the earliest opportunity) and for the recovery of the crops. The final sentence is one of 6 months imprisonment dated from the 25th May 2018. The appellant has already served this sentence, presumably with good behaviour, and he is therefore to be released from custody immediately and without condition

13.] Orders.

1. The sentence passed below is set aside
2. A new sentence of 6 months' imprisonment is imposed.
3. The sentence is to run from the date of the original sentence, being 25 May 2018.
4. The appellant having served that sentence is to be released from custody immediately.



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P.K. Madigan

Judge

High Court Lautoka

16th November 2018