

A

NIKOLAU DRIU

v.

B

REGINAM

[SUPREME COURT, 1970 (Moti Tikaram P.J.), 25th September, 6th November]

Appellate Jurisdiction

C *Criminal law—sentence—larceny by servant—reduction of term of imprisonment—full confession and plea of guilty.*

Sentence of two years' imprisonment on a conviction of larceny by a servant involving sums amounting to a little over \$1,000 over a period of nine months, reduced on appeal to one year, where the accused, aged twenty years was a first offender, had been placed in circumstances of great temptation, had made a full confession of his guilt at all stages and pleaded guilty.

D

Cases referred to:

Attorney-General v. Naurang Pratap S.C. Cr. Ap. 16/1969 (unreported).

Abdul Kuddus Hussein v. Reginam S.C. Cr. Ap. 119/1968 (unreported).

E *Regina v. Ram Rattan* S.C. Cr. Case 23/1968 (unreported—reported on appeal (1969) 15 F.L.R. 198)

Regina v. Iliasa Vula Waqanituinayau S.C. Cr. Case 21/1969 (unreported).

R. v. Harper [1967] 3 All E.R. 619n; 52 Cr. App. R. 21.

R. v. de Haan (1967) 52 Cr. App. R. 25.

R. v. Ramsey [1969] Crim. L.R. 668.

Appeal against a sentence imposed in the Magistrate's Court.

F

Appellant in person.

J. R. Reddy for the respondent.

The facts sufficiently appear from the judgment.

MOTI TIKARAM P.J.: [6th November, 1970]—

G This is an appeal against sentence only. The appellant was sentenced to two years' imprisonment on the first count for the offence of larceny by servant. He had stolen a little over \$1,000 over a period of nine months whilst employed as a clerk in the Administration, Nadi. He was also charged with three counts of falsification of accounts to which he also pleaded guilty and he was given a sentence of six months' imprisonment on each of these counts. However the sentences on these additional counts were, very properly, made to run concurrently with the sentence on the first count as the falsifications were resorted to, to cover up the substantive offence of larceny. This means the effective sentence this appellant H was ordered to undergo was two years' imprisonment.

The ground on which this appeal is brought is that the sentence is harsh, wrong in principle and manifestly excessive.

The accused is 20 years of age. He is a first offender. He had admitted the offences to the police and also to the court. At the hearing of this appeal he said he was genuinely sorry for his wrong-doing. He made a strong plea to avoid a prison sentence saying that he had a strong desire to rehabilitate himself. Before sentencing this accused the learned trial Magistrate had obtained a report from the local Probation Officer which report made reference to some mitigating features, one of which was that the accused had been placed in circumstances of great temptation in that he as a junior officer was entrusted with the duties of handling large sums of monies without the supervision of a senior officer. Indeed the Probation Officer recommended a period of probation for this offender. I am sure that this recommendation would not have been made had the Probation Officer not been satisfied that the accused would respond to probation. However the learned Magistrate was entitled not to accept this recommendation in view of the gravity of the offences, the need for some deterrence and the serious breach of trust over a period of time. In these circumstances I uphold the learned Magistrate's decision to impose a prison sentence.

The Crown without making any concessions has very rightly brought to my notice a number of cases, a consideration of which would lead to the view that the sentence imposed on this appellant was, comparatively speaking, on the harsh side. In each of the cases cited the accused person was older than the appellant and, further, in each of these cases the accused showed no remorse and not only pleaded not guilty but actually went on appeal in the face of overwhelming evidence of guilt. Some of the cases referred to by the learned Crown Counsel were—

1. *Attorney-General v. Naurang Pratap—Criminal Appeal No. 16/69*—In this case whilst the Supreme Court acknowledged that where offences involving a serious breach of trust are committed, particularly when they are continued over a long period of time, a sentence of imprisonment is usually the only proper sentence which a court can justifiably impose, it nevertheless refused to disturb the order of the magistrate's court whereby the respondent was placed on probation for three years for offences involving mis-appropriation of funds amounting to just over \$2,000.
2. *Abdul Kuddus Hussain v. Regina—Criminal Appeal No. 119/68*. In this case the appellant had misappropriated almost £7,000 (i.e. \$14,000) of his employer's money over a period of time. He was charged with two counts of fraudulent conversion and in the alternative with two counts of larceny by servant. He was convicted on fraudulent conversion charges and was given a sentence of six years' imprisonment that is to say three years for each count alleging fraudulent conversion. On appeal the total sentence was reduced by the Supreme Court to four years' imprisonment, that is to say two years for fraudulent conversion of the sum of £3,372 5s. 3d. and two years for fraudulent conversion of the sum of £3,326 1s. 0d. The appellant went to Court of Appeal against convictions but his appeal was dismissed.
3. *Regina v. Ram Rattan. Criminal Case No. 23/68*. In this case the accused was charged with 13 counts of embezzlement. He was convicted on six counts and was given an effective sentence of two years' imprisonment for these offences. He too, had pleaded not guilty and indeed appealed to the Fiji Court of Appeal against his convictions.* His appeal was also dismissed.

* See (1969) 15 F.L.R. 198.

4. *Regina v. Iliesa Vula Waqanituinayau, Criminal Case No. 21 of 1969.*

A The accused was charged with a total of 12 counts involving fraudulent false accounting by a public officer and with fraudulent conversion of property. He was given eighteen months on each of the 12 counts. All the sentences were ordered to run concurrently.

B This court, whilst satisfied that the sentence of imprisonment was not wrong in principle, is inclined to the view, having regard to the appellant's age, the fact that he was a first offender, the fact that he pleaded guilty and the fact that he made a full confession of his guilt at all stages, that the sentence was somewhat on the harsh side. The need for a reasonable degree of consistency and the fact that the appellant pleaded guilty and showed remorse should tell in his favour. In *Regina v. Harper* and *Regina v. de Haan* (1967) 52 Cr. App. R. 21, 25, it was held that a severer sentence may not be justified on a defendant because he had pleaded not guilty to the crime of which he was convicted and his defence included allegations that the prosecution witnesses had given perjured evidence, and that he had been threatened and intimidated by the police. Conversely, it was observed, a sentence should take into account as a mitigating factor that the defendant had admitted and showed remorse for his crime. This view was given cognizance in *Rex v. Ramsey* [1969] Crim. L.R., 668, namely the principle that the offender's remorse expressed, *inter alia*, in a plea of guilty, is a mitigating factor which may reduce the sentence below the level appropriate to the offence but that the offender's insistence on being tried does not justify sentence above that level.

D Whilst this court is hesitant to interfere with the quantum of sentence passed and whilst it subscribes to the view that an allowance in mitigation for remorse is in the discretion of the court and does not follow automatically on a plea of guilty, however, on the particular facts and circumstances of this case it is of the view that some allowance ought to be made for accused's plea of guilty and his remorse, bearing in mind his age and previous good character. Consequently I reduce the sentence of two years' imprisonment on the first count to twelve months' imprisonment. The sentence passed on the other counts will remain undisturbed and they will run concurrently with the sentence of 12 months' imprisonment on the first count.

E
Appeal allowed.