

MOHAMMED KHALIL & ANOTHER

v.

REGINAM

[SUPREME COURT, 1978 (Grant C. J.) 19th May]

Appellate Jurisdiction

Criminal law—Appeals—appeal against conviction following unequivocal plea of guilty—Criminal Procedure Code (Cap. 14) s. 290(1)—Kenya Criminal Procedure Code Section 348(1).

Criminal Law—Principles of Sentencing—Larceny from dwelling house and receiving stolen property—young offender of previous good character—appropriate sentence—Penal Code (Cap. 11) Ss. 302(1), 347(1)(a).

The appellants who were young men of previously good character were convicted on their own pleas and sentenced to 3 years imprisonment. They appealed against conviction and sentence.

Held: 1. So long as a plea of guilty is unequivocal and contains no ambiguity no appeal lies against conviction.

2. For a young offender of previous good character the appropriate sentence in the circumstances disclosed was 12 months imprisonment.

Cases referred to:

R. v. Wakelin (1951) 18 E. A. C. A. Rep 185

S. v. Recorder of Manchester [1971] A. C. 481

R. v. Marylebone Justices [1971] 1 All E. R. 1025

Appeal against conviction and sentence in the Magistrate's Court.

GRANT C. J.:

On the 2nd February 1978 at Labasa Magistrates Court the first appellant was convicted on his own plea of larceny in a dwelling house contrary to section 302(1) of the Penal Code and the second appellant was convicted on his own plea of receiving stolen property (being the proceeds of the theft) contrary to section 347(1)(a) of the Penal Code and each appellant was sentenced to three years' imprisonment.

The appellants have appealed against sentence as being harsh and excessive.

In addition they sought to appeal against conviction on the ground that they pleaded guilty as a result of undue influence and misrepresentations made by police officers, in support of which the second appellant swore an affidavit prepared by his solicitors containing further and better particulars. At the hearing no attempt was made by counsel to pursue this, as it is well established that allegations of this sort do not constitute grounds for appeal.

- Section 290(1) of the Fiji Criminal Procedure Code specifically provides that no
- A** appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on such plea by a magistrates' court, except as to the extent or legality of the sentence. This provision is in pari materia to section 348(1) of the Kenya Criminal Procedure Code in regard to which it has been held that, so long as a plea of guilty is unequivocal and contains no ambiguity, an appeal against conviction does not lie (*R. v. Wakelin* (1951) 18 E. A. C. A. 185). The same principle applies in
- B** England; and once a case has been completed by a trial court, by sentence or other final adjudication (*S. v. Recorder of Manchester* (1971) A. C. 481), then so long as the plea of guilty was unequivocal, the accused fully understood the charge to which the plea of guilty was entered, and nothing took place before the trial court to cast any doubt on the plea, no court has jurisdiction to entertain an application for a change of plea (*R. v. Marylebone Justices* (1971) 1 All E. R. 1025).

- C** For these reasons this purported ground of appeal was not entertained.

As to sentence, the first appellant entered the house of the complainant and removed a box containing money which he forced open and the contents of which he subsequently gave to the second appellant who was aware of the theft.

The first appellant is seventeen years of age and the second appellant twenty years of age and neither of them has any previous conviction.

- D** In the circumstances the sentences of three years' imprisonment are excessive and are quashed. In substitution therefor each appellant is sentenced to twelve months' imprisonment with effect from the 2nd February 1978.

Appeals against conviction dismissed; appeals against sentences allowed and sentences varied.