

Particulars of Offence

NISA WAQA, on the 06th day of April, 2011 at Labasa in Northern Division, entered into the dwelling house of one **SARLA WATI**, as a trespasser with intent to steal therein.

Statement of Offence

Count 2

THEFT; Contrary to section 291 of the Crimes Decree 44 of 2009.

Particulars of Offence

NISA WAQA, on the 06th day of April, 2011 at Labasa in Northern Division, stole one Twisted Chain with pendant, valued at \$400.00, 1 x ballmala valued at \$500.00, 1 x mangula suthra valued at \$200.00, 2 x pair earring valued \$400.00, 2 x ring valued at \$350.00, 2 x pair 3 piece ring \$300.00, 1 x twisted chain valued at \$100.00 and cash \$60.00, all to the total value of \$2310.00, the property of **SARLA WATI**.

2. On 3 June 2014, the court sentenced the appellant as follows:

- (i) Count No. 1 - Burglary - 22 months imprisonment
- (ii) Count No. 2 - Theft - 8 months imprisonment

Both sentences were made concurrent to each other, thus the appellant will serve a total of 22 months (i.e. 1 year 10 months) in Prison.

3. The appellant was not happy with the sentence. He did not appeal against conviction. His complaints were as follows:

- (i) The sentence was harsh and excessive;
- (ii) The learned Magistrate should have imposed a suspended sentence.

4. I have carefully read the court record, the court's judgment, and the sentence, to find out whether or not, the appellant's complaint was justified. I have carefully read the papers submitted to court in relation to his appeal, and considered the parties' verbal submissions. I have also looked into whether or not the conviction was proper, although the appellant did not complain against the same.
5. On the conviction, the learned Magistrate was the judge of fact and law. It was not disputed that the complainant's home was burgled on 6 April 2011, and her properties, itemized in count no. 2, were stolen. Part of her properties was a gold chain recovered by the police from a jeweler, who died before the trial. The complainant identified the gold chain as hers. At this point, nothing connected the appellant to the crimes. However, he choose to give sworn evidence in his defence. He admitted the above gold chain was in his possession, and he sold it to the above jeweler. He said, the gold chain was given to him by a third party to sell. The court found the appellant guilty of the crimes for being in possession of the stolen property, with no reasonable explanation for the same. In my view, the conviction was proper, and cannot be faulted.
6. As to the sentence, the learned Magistrate followed the proper procedure and law in sentencing the appellant. She identified the relevant authorities, identified the relevant mitigating and aggravating factors and started her sentences within the relevant tariff. She made the appropriate reduction and addition for the mitigating and aggravating factors. Then she arrived at her sentences. She considered whether or not to impose a suspended prison sentence. She was of the view that it was inappropriate. I find that I cannot find any fault in the way the learned Magistrate sentence the appellant. The only reservation I had was that we are dealing with a repeat offender, who had 5 previous convictions in the last 10 years. He had 4 previous convictions for stealing type offences, and two of which were "robbery with violence".
7. The learned Magistrate could have sent the appellant to the High Court for sentencing. As such, the High Court could have treated him as a "habitual offender", and sent him to a possible 5 years imprisonment, to protect the community. However, the learned Magistrate choose not to exercise such discretion. She passed a sentence of 22 months imprisonment.

In my view, the sentence was not excessive. She was also correct in not suspending the sentence.

8. In my view, there was no merit in the appeal, and I dismiss it accordingly.




Salesi Terno
JUDGE

Solicitor for Appellant : Appellant in Person
Solicitor for Respondent : Office of Director of Public Prosecution, Labasa