

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO.: 48 OF 2014

BETWEEN: MOHAMMED ALIYAZ

Appellant

AND: STATE

Respondent

Counsels: The Appellant in person
Mr. Aman Datt the Respondent

Date of Hearing: 27 November 2014

Date of Judgment: 27 November 2014

JUDGMENT

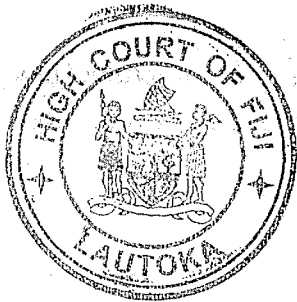
1. The appellant with two others were charged before the Rakiraki Magistrate Court with one count of Theft contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.
2. The appellant pleaded Guilty to the charge, convicted and sentenced for a period of 11 months imprisonment with 7 months of that suspended for 3 years on 18th September 2014.
3. This appeal against the sentence was filed on 9.10.2014 within time.
4. His grounds of appeal against the sentence are:
 - (i) That the Learned Magistrate disregarded the fact that the appellant on 28th October 2013 come to agreement to pay the money in installments and that he

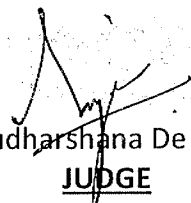
is paying money as ordered by the Small Claims Tribunal Nausori on 26th February 2014.

5. Both parties have filed written submissions.
6. The learned Magistrate had considered the following mitigating factors.

'He is 29 years old married with one daughter (2 years). He is working for the same company. Their boss the complainant was not giving them wages and they didn't have money to buy food and that's why they committed the offence.'

7. As the case record is not available it is not clear whether the appellant had brought the fact that he is paying the complainant before the learned Magistrate. Further the complainant is to deduct money from the appellant's wages.
8. This background warrants this court to exercise its powers in terms of section 256 (2) (a) of the Criminal Procedure Decree to vary the operation of the sentence ordered by the learned Magistrate. The Appellant had served 2 months and 10 days of his sentence. Balance period is suspended for 3 years.
9. Suspended sentence is explained the appellant.
10. Appeal allowed. The operation of the sentence varied.




Sudharshana De Siiva
JUDGE

At Lautoka
27th November 2014

Solicitors: The Appellant in person
Office of the Director of Public Prosecutions for Respondent