

**FILIMONI VETAU v STATE**

HIGH COURT — APPELLATE JURISDICTION

5 SHAMEEM J

17, 21 November 2003

[2003] FJHC 159

10 **Criminal law — sentencing — appeal against sentence — Theft Dwelling and Sacrilege — youth offender — 15 months' total sentence proper — Penal Code (Cap 17) ss 270(a), 298.**

15 Appellant sought an appeal against his total sentence of 15 months' imprisonment which was ordered to be served concurrently. He alleged that he had not committed any violent acts, the properties were recovered, and the value of the items stolen was small and that he wished to return to his village. He also asked for a non-custodial sentence.

20 **Held** — Appellant had used his religion to visit his victims' houses and was committing a series of Petty Thefts in his own community where clearly he was known and trusted. Fifteen months total sentence was proper.

Appeal dismissed.

**No case cited.**

The Appellant appeared in person.

25 *D. Toganivalu* for the State.

**Shameem J.** The Appellant was charged with the following offences:

CASE NO: 84/03

*Statement of Offence*

30 *THEFT DWELLING:* Contrary to Section 270(a) of the Penal Code, Cap. 17.

*Particulars of Offence*

FILIMONI VETAU on the 27th day of May 2003, at Nabilo, Tailevu in the Central Division stole a wrist watch valued \$150.00 the property of BINDRA SINGH d/o SHIU BHAJAN.

35 *CASE NO: 85/03*

*Statement of Offence*

*THEFT DWELLING:* Contrary to Section 270(a) of the Penal Code, Cap. 17.

*Particulars of Offence*

40 FILIMONI VETAU on the 5th day of June, 2003 at Nabilo, Tailevu in the Central Division, stole a wrist watch valued \$100.00, the property of SEEMA LATA s/o CHANDRIKA PRASAD.

*CASE NO: 86/03*

*Statement of Offence*

*THEFT DWELLING:* Contrary to Section 270(a) of the Penal Code, Cap. 17.

*Particulars of Offence*

45 FILIMONI VETAU on the 8th day of June, 2003 at Nabilo, Tailevu in the Central Division stole (1) video deck brand Samsung valued \$600.00 and (1) t-shirt valued \$20.00 all to the total value of \$620.00 the property of RAM DAYAL s/o FERREI.

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CASE NO: 87/03

*Statement of Offence*

SACRILEGE: Contrary to Section 298 of the Penal Code, Cap. 17.

*Particulars of Offence*

5 FILIMONI VETAU on the 30th day of May, 2003 at Nabilo, Tailevu in the Central Division broke and entered into the temple of one GAYA PRASAD s/o RAM AUTAR and stole from therein \$13.00 cash the property of GAYA PRASAD s/o RAM AUTAR.

He now appeals against the total sentence imposed on him of 15 months' imprisonment. Although his appeal is 2 days out of time he was granted leave to appeal in the Magistrates' Court. The facts were (on Magistrates' Court File 10 No 84/03) that on the 27 May 2003, the Complainant's daughter left her wrist watch on a wall of her house. At 6 pm she found that her watch was missing. The matter was reported to police and the Appellant was arrested. Under caution he admitted selling the wristwatch.

15 On 5 May 2003, at Nabilo, Tailevu the accused went to the house of Seema Lata and stole a wristwatch. The matter was reported to the police and the accused was traced, interviewed and charged.

On File 86/03, the Complainant Ram Dayal woke up at his home on the 9 June 2003, to find his video deck and one t-shirt missing. He reported the matter and 20 the accused was traced. Under interview he confessed to the theft.

On File 87/03 on the 30 May 2003 at 8 pm the Complainant locked his temple at Nabilo, Tailevu and went home. When his wife visited the temple again she discovered that the temple had been broken into and \$13 cash was missing. Under caution the Appellant admitted committing the offence.

25 The Appellant admitted these facts and one previous conviction in 2001 of Larceny in respect of which he was bound over for 12 months.

In mitigation he said he was 19 years old, single and a member of the "All Nations Church" at Nabilo. He said that he committed the offences because he was tempted to do so. All the items except for the cash stolen from the temple and 30 the wrist watch in File No 84/03, were recovered. He expressed remorse.

The learned magistrate found that the Appellant had used his religion to visit his victims' houses. He chose a starting point of 3 years and adjusted the sentence for the aggravating and mitigating circumstances (including the guilty pleas) and arrived at a sentence of 12 months' imprisonment on each of the theft offences 35 and 15 months' imprisonment for the sacrilege offence.

The Appellant appeals against that total sentence (which were ordered to be served concurrently) on the grounds that he had not committed any violent acts, the properties were recovered, the value of the items stolen was small and that he wished to return to his village in Seaqaqa. He asked for a non-custodial sentence.

40 In isolation, each file might have led to a shorter custodial sentence. However the Appellant was committing a series of Petty Thefts in his own community where clearly he was known and trusted. Twelve-month sentences in these circumstances are not wrong in principle. In File No 87/03, he committed the offence of the Sacrilege of a Temple. This offence clearly called for a custodial 45 sentence of more than 12 months' imprisonment. Sacrilege is an offence which strikes at the heart of religious freedoms guaranteed by the Constitution. It is an offence far more hurtful to a person than a theft in a house. In Fiji, religion and faith are of paramount importance to all our communities. Offenders who insult the faiths of the community, who fail to show others the respect they themselves 50 expect to receive, should be given custodial sentences which reflect society's disapproval of such behaviour.

Despite the Appellant's youth, the 15-month sentence on the count of Sacrilege was right in principle and not harsh nor excessive. All relevant factors were taken into account for the purpose of sentencing. For these reasons, this appeal is dismissed.

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*Appeal dismissed.*

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