

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 115 of 1978

BETWEEN:

ACHUDAN NAIR alias WILLIAM NAIR  
s/o Govind Nair

Appellant

- a n d -

R E G I N A

Respondent

Mr. A. Patel, Counsel for the Appellant  
Mr. H. Jennings, Counsel for the Respondent

JUDGMENT

The appellant was convicted for 9 charges of house-breaking and stealing and on a tenth charge for house-breaking with intent.

He was sentenced to a total of 6 years' imprisonment and he appeals against the severity of the sentence.

He is married and 21 years of age. Although he has not been to prison he was convicted for a similar offence in 1973 and was bound over. In 1977 he was fined for criminal trespass. The 10 offences in this appeal were committed in the four months between 5/4/78 and 6/8/78.

When I saw the appellant in Court it occurred to me that he did not show any signs of alertness but seemed to be somewhat dull. I do not mean that he was of weak intellect. I observe that he was earning \$24.00 per week as a labourer with the F.S.C. which indicates his rather poor background.

Estimation of the proper term of imprisonment is always extremely difficult and it has to be decided after one has concluded that an immediate term of imprisonment is the answer to a particular case.

Matters which militate against an accused are the cunning, deliberation, determination and planning are apparent

in his criminal escapade(s).

There did not appear to be any great cunning or planning by this appellant. He broke into the house of Suruj Kumar on 14/6/78, on 18/7/78 and on 26/8/78 he was arrested by the police who were watching the house when he broke into it for a third time. Behaviour of that kind does not suggest the approach of a professional or intelligent thief.

Apart from that the kind of property stolen does not portray the markings of a professional thief. He stole ladies' bras and panties. Thus in all he stole about 30 pairs of panties, and 8 bras; in four cases he stole (among other things) bottles of perfume; he also removed wine glasses and dishes.

He admitted all the offences.

I have carefully considered whether a suspended sentence would be appropriate in this case and conclude that it would not.

The appellant's behaviour merits an immediate term of imprisonment but in my view a period of 6 years is much too severe. He has not been in prison before and although this is not a reason for a lenient approach it demonstrates that he is not one who has been in prison and has not benefitted by it. In that sense one cannot say that he is a hardened criminal.

I set the sentences aside and in their place substitute the following:-

Counts I to IX - 21 months' imprisonment concurrently  
Count X - 9 months' imprisonment consecutive  
i.e. 30 months' imprisonment in all.

LAUTOKA,  
6th October, 1978

(sgd.) J.T. Williams  
JUDGE

Messrs. S.B. Patel & Co., for the Appellant  
Director of Public Prosecutions for the Respondent

Date of Hearing: 22nd September, 1978.