

Appellate Jurisdiction

Criminal Appeal Nos. 4, 5, 6, 7, 8 and 9 of 1981

Between:

SOLOMONE TAVUTU

and

REGINAM

Appellant in Person
Mr. R. Lindsay for the Respondent

JUDGMENT

Six appeals are before me all of which are against sentences and all relate to the appellant. The cases dealt with six separate charges relating to housebreaking entering and larceny all of which were heard on the 29th September 1980 in the Nausori Magistrate's Court. The offences occurred over a period between 28th August and 26th September 1980. The procedure adopted in the trial of the appellant was rather cumbersome and time-consuming as it entailed so much unnecessary paper work. It is difficult to see the justification for the separate trials of the appellant on the charges brought against him on that day. The charges were based on similar facts which occurred over a relatively short period of time.

Criminal Appeal No. 4 of 1981 relates to five counts of housebreaking, entering and larceny to all of which appellant pleaded guilty. Appellant was sentenced to three years imprisonment on first count, six months' imprisonment on Counts 2, 3 and 4 and three years' imprisonment on Count 5. All sentences were ordered to run concurrently.

Criminal Appeal No. 5 of 1981 involved one Count only to which appellant pleaded guilty and upon which appellant

was sentenced to one year imprisonment which was to be consecutive in effect.

Criminal Appeal No. 6 of 1981 involved one count only to which appellant pleaded guilty and upon which appellant was sentenced to one year imprisonment which was to be consecutive in effect.

Criminal Appeal No. 7 of 1981 involved one count only to which appellant pleaded guilty and upon which appellant was sentenced to one year imprisonment which was to be consecutive in effect.

Criminal Appeal No. 8 of 1981 involved one count only to which appellant pleaded guilty and upon which appellant was sentenced to six months' imprisonment which was to be consecutive in effect.

Criminal Appeal No. 9 of 1981 involved one count only to which appellant pleaded guilty and upon which appellant was sentenced to six months' imprisonment which was ordered to run concurrently with the other sentences passed on that day.

The total effective sentence passed on appellant in the Nausori Magistrate's Court was six and a half years' imprisonment.

At the hearing of the appeal appellant stated that he was on the following day (30.9.80) sentenced in the Suva Magistrate's Court on three separate charges of housebreaking, entering and larceny for which he was sentenced as follows:

On Suva Magistrate's Court Case No. 2846/80 to two years' imprisonment to be consecutive to the existing prison term, i.e. the term he received in the Nausori Magistrate's Court on the previous day;

On Suva Magistrate's Court Case Nos. 2847-2851 appellant was sentenced on each case to two years' imprisonment to be concurrent with the other sentences.

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The files on the Suva cases were called for and perused by this Court in the exercise of its revisional jurisdiction.

As a result of the sentences passed on him on the cases set out above appellant had faced a total effective prison term of eight and a half years.

Appellant is appealing against the severity of the sentences imposed upon him in the Nausori and Suva Courts.

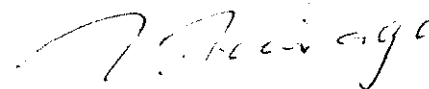
Appellant's record which dates back to 1954 is certainly extremely bad. In the Court below it has been described as "shocking" and this Court cannot agree more. His specialty seems to be housebreaking, entering and larceny. Appellant has forty one previous convictions of which the majority are for housebreaking etc. and similar crimes. Appellant has spent the best part of his life in jail and there seems to be little hope that he would ever reform himself. Despite this gloomy assessment of his future appellant appears to believe that he has changed for the better. He told this Court that he now fully realises the futility of his criminal way of life and he feels confident that that is now a thing of the past. According to him he now attends Church service regularly and has become a great believer in the Christian way of life.

This Court is reluctantly impressed with the apparent sincerity of appellant in his desire to lead a reformed life after all these years. Perhaps the appellant deserves some consideration on that score. Be that as it may this Court is satisfied that the sentence of eight and a half years' imprisonment is too long even considering the gravity of the offences in question. Crown Counsel conceded that the overall sentence in these cases was on the heavy side.

Accordingly the appeal will be allowed. It is ordered that the sentences passed in Criminal Appeal Nos.

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5.6.7,8 and 9 of 1981 be served concurrently with the effective sentence passed in Criminal Appeal No. 4 of 1981. This Order will have the effect of reducing the total effective sentence of six and a half years passed on the appellant in the Nausori Magistrate's Court on 29.9.80 to three years' imprisonment. It will not be necessary to review the sentences passed in Suva Magistrate's Court on 30.9.80 which were quite appropriate. In the result the appellant will serve in all five years' imprisonment and not eight and a half years' imprisonment ordered as a result of proceedings against the appellant in the Nausori and Suva Magistrate's Courts as above mentioned.



(T.U. Tuivaga)
Chief Justice

Suva,
16th April, 1981.