

Appellate Jurisdiction

Criminal Appeal No. 59 of 1982

000371

Between:

LEPANONI QOROYA alias BABA

Appellant

and

REGINAM

Respondent

Appellant in Person

Mr. S. Singh for Respondent

REASONS FOR JUDGMENT

I had reserved my reasons for allowing this appeal against sentence to be given later and this I now set out to do.

On 28th July, 1982 appellant was convicted in the Suva Magistrate's Court on his own plea on two separate charges. The first charge (Suva Case No. 1983/82) relates to the effect of shopbreaking, entering and larceny contrary to section 300 of the Penal Code for which appellant was sentenced to four months' imprisonment.

The second charge (Suva Case No. 1989/82) comprised two counts, the first count relating to the offence of burglary contrary to section 299(a) of the Penal Code for which appellant was sentenced to eighteen months' imprisonment; the second count relating to housebreaking, entering and larceny for which appellant was sentenced to nine months' imprisonment. These sentences were made concurrent.

The facts in these cases are such that the custodial sentences passed on the appellant in the Court below would not in the ordinary way be considered manifestly excessive or harsh. However it is submitted that appellant is a young person who is still at school. He only turned eighteen recently. He is due to sit important public examinations towards the end of the year. By all accounts he is doing quite well at school. The principal of his school was in Court and spoke most favourably about the appellant. He believes that this lapse of behaviour is now well behind him and is not likely to be repeated. He urges this Court to give appellant a suspended sentence so that his schooling may not suffer. Appellant's parents were also in Court and were likewise very much concerned about the detrimental effect upon appellant of any custodial sentence.

In two of the cases already mentioned in which appellant was charged with two other youths, those youths were given conditional discharges.

The Court is always anxious to use an individualised form of sentence on a young offender where it believes this would help him be rehabilitated. There is every reason to believe that such a course may prove beneficial in the long run. It is always a difficult matter sentencing young offenders because with regard to them a custodial sentence should be a measure of last resort only. There can be no doubt that a custodial sentence in this case would be disastrous for appellant so far as his future life is concerned.

I am satisfied that sending appellant to gaol would not be in his best interests nor would it serve the best interests

of society which has a stake in helping young people becoming good citizens.

As was announced in Court the sentences passed in the Court below had been set aside and the following substituted in lieu thereof:

- (i) In respect of Suva File No. 1983/82 - 4 months' Imprisonment
- (ii) In respect of Suva File No. 1989/82 -  
Count 1 - 9 months' imprisonment  
Count 2 - 9 months' imprisonment

- all to be concurrent and suspended for twelve months.  
(Section 29(4) of the Penal Code has been complied with)

Suva,  
2nd November, 1982.

Chief Justice