

Appellate Jurisdiction

Criminal Appeal No. 6 of 1984

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Between:

SAKIASI RATUNIDEUBA

Appellant

and

REGINAM

Respondent

Mr. K. Bulewa for Appellant

Mr. J. Sabharwal for Respondent

JUDGMENT

This is an appeal against sentence from the Suva Magistrate's Court where on 1st December 1983 appellant with another person was convicted on his own plea of committing arson contrary to section 371(a) of the Penal Code and was sentenced to five years' imprisonment.

The other person also received five years' imprisonment.

The ground of appeal is that the sentence imposed on appellant was harsh and excessive having regard to the degree and extent of his involvement in the commission of the offence and his antecedent history.

At the hearing of appeal counsel for appellant argued that the facts outlined before the trial Court did not reflect fairly and correctly the lesser role of the appellant in the incident. Counsel invited the Court to take time to examine for itself the police dockets in relation to the case as he felt the distinction in culpabilities between the two accused was not elicited before the trial Court.

This Court did not accede to the request taking the view that it was for counsel to investigate the matter beforehand

with assistance of the Office of the Director of Public Prosecutions, if necessary. It was for counsel to collate his findings from his own investigation and having done so should then put them before this Court. This is an appeal on the record and not a rehearing. The appeal was then adjourned to enable counsel for appellant to carry out the task he should have performed in the first place before making submissions to this Court on a ground of appeal upon which he was relying so heavily.

In any event the outcome was that it was accepted on both sides that it was the other person and not the appellant who was the main culprit in the piece nor could it be said that their culpabilities in the offence were the same. It appeared that that other person had prevailed upon the appellant who was at his house at the time to go with him to set fire to complainant's house - a criminal adventure which had been planned by a shopkeeper at Wainibokasi with that person. It would seem too that the appellant only got involved somewhat fortuitously in the crime through the other person who was older and seemed more criminally experienced.

The appellant who was not legally represented in the Magistrate's Court is eighteen years' old and comes from a respected family. His father, a senior education officer has throughout these proceedings been present. He was obviously very concerned for his son which is refreshing and augurs well for the future of the appellant. It appears from what this Court has been told that there is good prospect that his schooling which has unfortunately suffered in recent months could be salvaged with the help of his father who is anxious to see that appellant goes back to school. His father has sat in Court during the appeal throughout and was prepared to go into the witness box to speak on behalf of his son. However, the assertions of counsel about his parental and professional concern for his son were accepted by this Court rendering it unnecessary for him to do so in the witness box.

*Edward St*

Appellant has been in prison for six months now.

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In the whole of the circumstances of this case in relation to appellant, I am satisfied that given his young age and the parental concern for him his rehabilitation would serve the interests of the society better than his continued incarceration for its own sake. I am also satisfied that with the help and influence of his father, the appellant may reasonably be expected to avoid bad company and develop into a worthy and useful citizen.

The appeal is allowed. The sentence imposed in the trial Court is set aside and in lieu thereof appellant is sentenced to two years' imprisonment suspended for two years.



Chief Justice

Suva,

11th May 1984.