

R. v. SHUNGA WHITE.

A CRIMINAL REVIEW CASE OF 1937.

Burglary and theft—five charges—all offences committed during course of one night—value of property stolen not considerable—entry in each case in same manner and dwelling-houses all close to each other—sentences totalling five years' imprisonment with hard labour in such circumstances excessive.

Where a series of offences of a similar nature and carried out in a similar manner are committed within a short period, the whole series forming one lapse into crime, the convicting Court must take this into consideration in passing sentence.

For further cases in which are considered the principles governing punishment see *R. v. Sikopo John* p. 102 *ante*; *R. v. Edward Nsokolo* 2 N.R.L.R. p. 85 and *Simasiku v. The King* 4 N.R.L.R. p. 114.

Francis, J.: I have reviewed cases Nos. 11 and 12/37, Lusaka. An aggregate of five years' imprisonment for five offences of burglary of the nature described is too severe and I am not prepared to let it stand.

I have given reason so many times for intervention in the matter of severity of punishment, particularly in cases involving theft, and would commend the Magistrate's attention to a discussion on the subject which took place before the Supreme Court of Kenya in its Revisional Jurisdiction in *Rex v. Malakwen Arap Kogo* (K.L.R. Vol. XV, 1933, at p. 115). The principles therein defined may be accepted as authoritative and I agree with them. The five offences here under review were committed during the course of one night. The value of the articles stolen does not appear to amount to more than £8. In every case entry seems to have been obtained through unlocked doors of the various flats in question. These flats are quite close to one another.

The sentence of one year in the third charge of case No. 11 is to run concurrently with the two sentences imposed in respect of the first and second charges. The sentence of one year in respect of the first charge in case No. 12 is to be consecutive with two consecutive sentences of one year each in respect of case No. 11 and the sentence of one year in respect of the second charge in case No. 12 is to run concurrently with the cumulative sentence of three years referred to above.

In the result the accused will serve three years instead of five years.

The Resident Magistrate should remember to forward for confirmation sentences beyond his competency.