IN THE FIJI COURT OF APPEAL
Criminal Jurisdiction
Criminal Appeal No. 47 of 1977

Between:

PRADIP CHANDRA REDDY
s/o Subramani Reddy — Appellant

- and -

REGINAM — Respondent

Date of Hearing: 8th November, 1977
Delivery of Judgment: 25th November, 1977

Mr V. Parmanandam for the appellant.
Mr M. Raza for the respondent.

JUDGMENT OF THE COURT

Gould V.P.

The appellant was convicted in the Magistrate's Court of the offence of wrongful confinement contrary to Section 288 of the Penal Code (Cap 11). The magistrate imposed a fine of $50 and the Director of Public Prosecutions brought an appeal to the Supreme Court on the ground that the sentence was manifestly lenient.

The facts as related in the judgment in the Supreme Court were as follows:

> "On the night of 26th November last the respondent drove to the Naduri jetty in his van with two other men. There they drank liquor and had some meal. Afterwards whilst they were about to leave in the van, three young girls ran up to them from the nearby village of Naduri. One of the girls asked the respondent on their behalf for a lift in his van to Nasoso village along the

> way. The respondent agreed and thereupon the girls got onto the back of the van. As the van approached the point on the road where the girls wanted to get off they shouted to the respondent to stop but he ignored the shouts to stop and increased the speed with which the van was travelling. One of them banged on the roof of the van and as the respondent did not stop she slapped his face but the van continued travelling at high speed. The girls became very frightened and were in a panic. Each of them decided to jump off the speeding van and did so, one after the other with dire results. Two of them died almost immediately from injuries received whilst the third survived the severe injuries she sustained."

The learned magistrate had found that the appellant had heard the tapping on the roof of the cab and the screaming of the girls as related in the above passage and that his face was slapped as stated. In the learned judge's view, the magistrate erred in his assessment of the proper sentence in not giving weight to the circumstances, which, to the mind of the learned judge, indicated that the respondent had "other motives" in relation to the girls. He therefore set aside the fine and imposed a sentence of nine months imprisonment. Against this sentence the appellant has lodged the present appeal to this court.

Such appeals are limited by section 22(1) of the Court of Appeal Ordinance (Cap.8) which reads :

> "22(1). Any party to an appeal from a magistrate's court to the Supreme Court may appeal, under this part of this Ordinance, against the decision of the Supreme Court in such appellate jurisdiction to the Court

> of Appeal on any ground of appeal which involves a question of law only (not including severity of sentence): Provided that no appeal shall lie against the confirmation by the Supreme Court of a verdict of acquittal by a magistrate's court".

Quite clearly, on the face of it, the present appeal is brought against the severity of the sentence of twelve months passed by the learned judge, and is equally clearly barred by the section just quoted. Mr. Parmanandam seeks to get around this difficulty by saying that he is not bringing the appeal against the sentence as such but against what he considers a wrong exercise of discretion, amounting to an error in law; this he submits, should be corrected and the case sent back for a new sentence to be imposed accordingly.

The error in principle is claimed to be that the learned judge substituted his discretion for that of the magistrate in giving weight to his view of the gravity of the appellant's conduct in the light of his supposed intent, whereas the magistrate considered the resulting deaths of the two girls not relevant.

We are unable to agree that there is any matter here which would, in our opinion, take the case out of the plain provisions of section 22(1) that no appeal lies to this court in such cases against the severity of sentence. Beyond such errors of law as might be relevant to the legality, as opposed to the severity, of a sentence, we find it difficult to envisage an error of law which could be pertinent to the question of sentence other than in the sense of severity. Certainly no such question

arises here, though we would add that we are not of the opinion that the learned judge fell into any error of law at all. As this court said in Prem Chand and Ram Pratap v. Reginam, Criminal Appeal No. 5 of 1976, - "We read section 22(1) as meaning that there is no jurisdiction to entertain an appeal against a sentence which goes to the quantum or extent of a sentence even if a question of law is involved."

Though it is not strictly necessary for the purpose of deciding this appeal, in our judgment the ground relied upon by counsel for the appellant is without substance. The power of the learned judge on an appeal from a magistrate's court in relation to sentence is contained in section 300 of the Criminal Procedure Code and is in the widest terms. In any appeal the Supreme Court may quash the sentence passed by the magistrate and pass such other sentence warranted in law, whether more or less severe, as it thinks ought to have been passed. The Supreme Court is unfettered and is not bound by any principle that the magistrate may have thought fit to observe: it was not submitted to us that the principle on which the learned judge acted was a mistaken one, nor would it, in view of the terms of section 22(1) of the Court of Appeal Ordinance, have availed the appellant if it had been.

In the result we find that this is an appeal against severity of sentence and that we have no jurisdiction to entertain it; it is therefore struck out.

(Sgd.) T. Gould
Vice-President

(Sgd.) C.C. Marsack
Judge of Appeal

SUVA
10th November, 1977

(Sgd.) T. Henry
Judge of Appeal