IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 52 of 1986.

Between:

1. TEVITA DONU
2. PANAPASA DONU

Appellants

- and -

R E G I N A M

Respondent

Appellants in person.
M. D. Scott (Director of Public Prosecutions) for the Respondent.

Date of Hearing : 23rd October, 1986

Delivery of Judgment: 31st ~~November~~ October, 1986

JUDGMENT OF THE COURT

Speight, V.P.

The two appellants pleaded guilty in the Magistrate's Court to a charge of rape and were each sentenced by the presiding Magistrate at Nausori on the 13th of November 1985 to terms of six months imprisonment. The Director of Public Prosecutions filed a Petition of Appeal pursuant to section 308 of the Criminal Procedure Code Cap. 21 claiming that the sentence was manifestly lenient. Apparently there have been delays in the Supreme Court Registry due to pressure of work from the multitude of cases awaiting trial or seeking appeal, so that the preparation of the case on appeal was not completed until midway through 1986 and the appeal did

not come before the Supreme Court until June.

On 4th July His Lordship Mr. Justice Rooney delivered a judgment in which he reviewed the circumstances of the case and in particular the recent comprehensive review of sentencing policy in rape Cases by the Lord Chief Justice of England - R. v. Billam (1986) 1 All E.R. 985. He said and we endorse his view that the penalty imposed in the Magistrate's Court was manifestly inadequate and a far heavier term of imprisonment was called for. He noted however with regret the circumstance that, due to the administrative delays already referred to, the men had served their initial sentences and had been released and returned to their village. He appreciated that this was a most unfortunate factor and he said that he took it into account in imposing a sentence of four years imprisonment - we take it that he thought that this was the most lenient sentence which was justified in the circumstances taking into account all these factors.

Now the appellants, who appear in person, have appealed to this Court, and in addition to written submissions, Tevita Donu addressed the Court on behalf of himself and his brother. It is apparent that the main grievance that they feel is that they thought that they had served their sentence, and feel it unfair that having been released they have been taken back to serve a longer term. One must feel some sympathy for them in these circumstances but two

factors prevent any intervention by this Court:-

1. The penalty imposed on appeal by the learned Supreme Court Judge appears to us to be appropriate.

2. In any event, there is no jurisdiction for a second appeal to be entertained against sentence in these circumstances.

Section 22(1) of the Court of Appeal Act Cap. 12 is as follows:-

> "22.(1) Any party to an appeal from a magistrate's court to the Supreme Court may appeal, under this Part, 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."

In order to ensure that full attention was being paid to the appellants' case, we had notified the Director of Public Prosecutions to consider whether an argument could be mounted to the effect that a sentence once served concludes the matter so as to put it beyond review thus elevating this to a point of law. We accept Mr. Scott's submissions that section 319(2) of the Criminal Procedure Code answers our query. It reads:-

> "319(2) At the hearing of an appeal whether against conviction or against sentence, the Supreme Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the magistrate's court and pass such other sentence warranted in law, whether more or less severe, in substitution therefor as it thinks ought to have been passed."

It will be noted that the effect of a decision in the Supreme Court is to quash the sentence passed by the Magistrate so that that sentence ceases to exist, as would a sentence that has been served, and the Supreme Court is authorized to impose such other sentence warranted in law as ought to have been passed. Clearly the Supreme Court Judge on Appeal has the original sentencing power.

It is apparent therefore that these appeals cannot be entertained. One cannot however but be disturbed by the delays encountered in cases coming to trial in the Supreme Court whether on committal or appeal. The staff does its best but is over-burdened by the pressure of work, much of which could more conveniently be dealt with in the Magistrate's Court and with equal justice.

We are advised that a Bill will be coming before Parliament in the New Year aimed at re-arranging part of the Criminal Procedure with a view, inter alia, to overcoming part of the problem. It is to be hoped that this result will be achieved in the interest of justice

and in particular for the more speedy and convenient despatch of cases where citizens face the criminal process.

.....

Vice-President

.....

Judge of Appeal

.....

Judge of Appeal