

IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 10 OF 1989

BETWEEN:

CHANDRA SEKHAR SHARMA

Appellant

- and -

STATE

Respondent

Appellant in Person
Mr S. Senaratne for the Respondent

Date of Hearing: 1st November 1990
Delivery of Judgment: 8th November 1990

JUDGMENT OF THE COURT

This is an appeal against severity of sentence only.

On 5th May 1989 the Appellant pleaded guilty before the High Court at Suva to a total of 36 counts involving dishonesty. On 9th May 1989 the Court sentenced him as follows:-

2.

<u>Cr. Case No.</u>	<u>Nature and No. of Charges</u>	<u>Imprisonment Sentence Passed</u>
Cr Case No. 49/88	1 count of larceny of cheque valued at 5c.	9 months.
	11 counts of forgery of cheques and withdrawal slips.	18 months for each of the forgery counts.
	11 counts of obtaining goods or money on forged documents.	3 years on each count.
Cr Case No. 52/88	1 count of forgery of passbook.	18 months.
	3 counts of uttering forged documents.	12 months on each count.
	3 counts of obtaining money on forged documents.	18 months on each count.
Cr Case No. 11/89	3 counts of forgery of withdrawal slips.	18 months on each count.
	3 counts of obtaining money on forged documents.	2 years on each count.

All the sentences were ordered to run concurrently with the result that the total effective sentence that the Appellant had to undergo was 3 years only. All the offences were committed between July and August 1987. The total sum involved in respect of all 3 cases was \$2180. At the time of his sentence the Appellant was already serving a sentence of 4 1/2 years imposed on him on 23rd February 1989 by the Magistrates' Court in Criminal Case No. 989 of 87 for 14 counts of larceny by trick committed in 1986. In addition, a 3-month suspended sentence was also activated by the Magistrates' Court. The High Court ordered that the 3-year concurrent sentence it passed be served consecutively to the 4 1/2-year sentence the Appellant was already serving.

In Case No. 49/88 the Appellant obtained a cheque book on the Complainant's account by forging a requisition form. He then forged the Complainant's signature on 11 cheques and obtained goods (on one occasion) and approximately \$1,250 in cash from the Bank.

In Case No. 52/88 the Appellant forged his own passbook with the NBF by falsely entering deposits in excess of \$36,000. He verified these false deposits by using a NBF stamp which he had stolen from the Bank during his employment with the Bank. He thus was able to withdraw a total of \$500.00 from various post office branches of the Bank, before he was apprehended.

In Case No. 11/89 the victim was the wife of the Complainant in Cr Case No. 49/88. The Appellant had forged her signature on 3 withdrawal slips and thus was able to obtain a total of \$430 from her account at National Bank of Fiji.

The Appellant's written grounds of appeal together with his oral submissions against severity of sentence may be summarized as follows:-

- (a) That his plea of guilty was not given weight in mitigation,
- (b) That his co-operation with the police ought to have been taken into account,
- (c) That he was a married man with five children and was the sole bread winner,
- (d) That he committed the offences whilst he was unemployed,
- (e) That he was already serving a sentence of nearly 5 years and hence an additional cumulative sentence of 3 years made the total punishment harsh and excessive,
- (f) That there was substantial disparity between the total sentence he received and sentences passed by the High Court in other similar cases bearing in mind the relatively small sum involved, i.e. \$2180 in cash.

4.

The Appellant pleaded that his sentence be made concurrent with the sentence imposed on him on 23rd February 1989. He said his wife had left him and that he had young children to look after. He also said that there was a 3-year delay in dealing with the offences he committed in 1986.

Our perusal of the record shows that there is no merit in the first 4 grounds submitted by the Appellant as the learned trial Judge had taken all the relevant factors into account. In fact he specifically gave credit to the Appellant for pleading guilty.

Mr Senaratne, the learned counsel for the Respondent, conceded that on the face of it the total cumulative sentence did appear to be on the harsh side but the Appellant's previous record shows that he had not benefitted from the leniency shown to him on occasions prior to 1989 when non-custodial sentences were imposed. Mr Senaratne confirmed that the 14 convictions entered in February 1989 for larceny by trick were for offences committed 3 years prior to that date. He could not explain the reason for such a long delay.

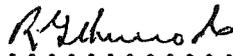
It is, however, clear that all the offences contained in the 39 counts the subject of the present appeal against sentence, had actually been committed in 1987, nearly 19 months prior to 23rd February, 1989 the date on which the Appellant was sentenced for 14 counts of larceny by trick by the Magistrates' Court.

Whilst we are satisfied that the learned sentencing Judge was correct in making the total effective sentence he imposed consecutive to the ones the Appellant was already serving because the present offences arose out of different transactions, were committed at different times, and involved different complainants, we feel that some reduction in the total effective sentence is called for having regard to the delay and other circumstances brought to our notice. We, therefore, reduce the 3-year concurrent sentences passed on 11 counts of obtaining goods or money by false pretences in Criminal Case No. 49/88

(i.e. on counts 3, 5, 7, 9, 11, 13, 15, 17, 19, 21 and 23) to 18 months imprisonment. Similarly, we reduce to 18 months the 2-year concurrent sentences passed in respect of counts 2, 4, and 6 in Criminal Case No. 11 of 89 for obtaining money on forged documents. The reduced sentences are to be served concurrently with all the sentences passed in Criminal Case No. 49 of 88, Criminal Case No. 52 of 88 and Criminal Case No. 11 of 1988 but consecutively to any sentence that the Appellant is currently serving. This means that the Appellant will serve a total of further 18 months sentence upon completion of the sentences imposed on him on 23rd February, 1989 by the Magistrates' Court in Criminal Case No. 989 of 87.



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Sir Moti Tikaram
Justice of Appeal



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Sir Ronald Kermode
Justice of Appeal



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M.D. Jesuratnam
Justice of Appeal