

IN THE FIJI COURT OF APPEAL

Criminal Appeal No. 3/91

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BEFORE THE HON JUSTICE MICHAEL M HELSHAM

PRESIDENT OF THE FIJI COURT OF APPEAL

AND THE HON JUSTICE SIR GORDON WARD

JUDGE OF APPEAL

WEDNESDAY THE 3RD DAY OF JUNE, 1992 AT 2.15 P.M.

BETWEEN:

HARBANS SINGH

APPELLANT

- and -

THE STATE

RESPONDENT

MR I MATAITOGA

FOR THE RESPONDENT

MR M RAZA

FOR THE APPELLANT

O R D E R

JUSTICE HELSHAM : The accused pleaded guilty to eleven charges which I will describe in a moment and was sentenced to 15 months imprisonment on each charges, the sentences being concurrent.

He has appealed to this court on the grounds of severity of sentences.

The facts really are in quite short compass and we need not deal with them in any great depth.

The relevant facts seem to us to be that he, the accused, was employed by the Fiji Sports Council as an accountant and as such he had responsibility for keeping all the books and accounts and financial records of the Council.

: He had been in that position since 1979.

Between 1983 and 1985, he took part in acts which enabled either himself or other employees of that Council to obtain fraudulently the sum of \$18,868.72. He enabled this to be done by falsifying the books of accounts of the Council.

The accused, when he was charged with the offences originally pleaded not guilty. However, when he came to trial in 1991, he pleaded guilty to all nine charges. Originally, he was charged with 9 counts pursuant to section 274 of the Penal Code which provides that a person in his position who steals any money is liable to imprisonment for 14 years. He also pleaded guilty to two charges under Section 307, which provide ~~that~~ for fraudulent falsification of accounts. That was in relation to \$3000, the part of the sum of \$18,000 mentioned earlier; and that section entitles the court to impose a custodial sentence of 7 years upon conviction.

It is probably relevant to note that in the definition of stealing which applies to Section 274, it is said that a person steals who without the consent of the owner fraudulently and so on takes and carries away anything but there is a proviso to that which says, "a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner."

By this man's actions, he enabled others to commit a fraud upon the Council and by his plea of guilty, he undoubtedly realised that

that is exactly what he was doing. 147

He adopted a system which he knew enabled others, if not himself, wrongfully and fraudulently to take monies not belonging to them from the monies of his employer and he engaged in a means of concealing that from his employer.

It seems to us that on the face of it that this activity extending over two years would enable the court to impose a very heavy sentence indeed. However, he had been charged first with these charges in December 1987. He had been charged ~~for~~ with two further charges in November, 1989 and he had not come to trial till the 6th February, 1991, so that the charges as it were had been hanging over his head for a considerable amount of time.

He had lost his job with the Council but he was in employment elsewhere. He had also suffered a considerable detriment by reason of various factors, perhaps the loss of employment. The point is that all those matters were taken into account by the learned trial judge. He says that he had taken into account all the matters which had been put in mitigation by the learned Counsel who appeared for the accused.

His Lordship said that he had carefully considered all that had been urged on behalf of the accused. Also, there was cited to His Lordship the same cases that have been cited to us in this court today, in which it would appear, from the passages that were read to us, that the same Judge had imposed different sentences and more lenient sentences in relation to fraudulent activities or criminal activities not very dissimilar from the present and which no

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JUSTICE HELSHAM  
(CONTD)

Doubt His Lordship thought were proper in the circumstances of those particular cases. However, we must decide this matter on the facts of this case, not upon others, and it seems to us that a very lenient sentence indeed was imposed upon a man in a position of trust who <sup>is that by</sup> knowing that his actions enabled others wrongfully to steal from his employer, continued that activity for two years and enabled large sums of money to be taken from the rightful owner.

We do not feel that there is any case to interfere with His Lordship's sentence.

The appeal will therefore be dismissed.

*Michael A. Beebe*

PRESIDENT

FIJI COURT OF APPEAL

(1(4) kc)