

IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 17 OF 1993
(High Court Criminal Case No. 15 of 1992)

BETWEEN:

S A I L O S I S E R U K A L O U

A P P L I C A N T

-and-

S T A T E

R E S P O N D E N T

Applicant in Person
Mr. Ian Wikaramanayake for the Respondent

Date of Hearing : 6th May, 1994
Date of Delivery of Judgment : 11th May, 1994

JUDGMENT OF THE COURT

The President having certified that he was of the opinion that it was impracticable to summon a Court of three judges, this appeal was heard by two judges as authorised by section 6(2) of the Court Appeal Act (Cap 12).

This is an application for an extension of time to appeal against the sentence imposed by the High Court in a criminal trial. The application was previously made to a single Judge and refused.

The applicant was charged with murder but pleaded guilty to manslaughter and was convicted of that offence. On 28th August 1992 he was sentenced to imprisonment for five years. On 18th August 1993 he applied for an extension of time to apply for leave to appeal. On 14th October 1993 Sir Moti Tikaram,

President (then Resident Justice of Appeal), heard the application and refused it.

The Court now has available to it court records which show that -

(1) on 17th October, 1990, the applicant was convicted of two offences of robbery with violence, for each of which he was sentenced to serve nine months' imprisonment, with the sentences running concurrently with one another; both sentences were suspended for 15 months.

(2) on 12th December, 1991, the applicant was convicted of two further offences of robbery committed on 28th June, 1991, for each of which he was sentenced to two years' imprisonment, with the sentences running concurrently with one another; and

(3) on 23rd December, 1991, the two suspended sentences of imprisonment were activated with the original terms unaltered, to be served consecutively with the sentences imposed on 12th December, 1991.

Surprisingly the learned trial judge, when passing the sentence under appeal in these proceedings, recorded:-

"None of the two accused has been to prison earlier although the first accused [i.e. the applicant in these proceedings] has previous conviction for which he was given a suspended sentence."

He then, after imposing a sentence of 5 years' imprisonment, ordered that it take effect from 13th December, 1991, the date on which the applicant was first remanded for the offence for which the sentence was imposed.

It is, we believe, clear that, when His Lordship passed the sentence, he was unaware -

- (1) that the applicant was already serving the sentences imposed on 12th December, 1991;
- (2) that the sentences suspended in October 1990 had been activated;
- (3) that, before the conviction in the case with which he was dealing, the applicant had been convicted of two offences of robbery in October 1990 and of two other offences of robbery in December 1991.

He, therefore, failed to take into account a number of matters which he ought to have taken into account.

Further, the fact of his ignorance of the previous sentences indicates that, in directing that the sentence he imposed was to run from 13th December, 1991, he was not intending to direct that it be served concurrently with the earlier sentences. It is by no means certain what, in those circumstances, was the effect of his direction.

We have come to the conclusion, therefore, that an extension of time to apply for leave to appeal should be granted and that the application for leave should also be granted.

Decision

Time to apply for leave to appeal extended to to-day.

Leave to appeal granted.

Hearing of the appeal to proceed forthwith.

Gordon Ward

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Mr. Justice Gordon Ward
Judge of Appeal

I. R. Thompson

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Mr. Justice I. R. Thompson
Judge of Appeal