

IN THE FIJI COURT OF APPEAL

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CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 17 OF 1993

(High Court Criminal Case No. 15 of 1992)

BETWEEN:

SAILOSI SERUKALOU

APPELLANT

-and-

S T A T E

RESPONDENT

Appellant in Person

Mr. Ian Wikaramanayake for the Respondent

Date of Hearing : 6th May, 1994
Date of Delivery of Judgment : 13th May, 1994

JUDGMENT OF THE COURT

This is an appeal against a sentence of 5 years' imprisonment imposed on the appellant on 25th August, 1992, after he had pleaded guilty to manslaughter. The learned trial Judge sentenced the appellant to serve 5 years' imprisonment and ordered that the sentence commence on 13th December, 1991, the date when the appellant had first been remanded after being charged with the offence.

Unfortunately his Lordship was not made aware that the appellant was already serving two sentences of imprisonment imposed on 12th December, 1991. Nor was he aware that two earlier suspended sentences had been activated on 23rd December, 1991. He apparently knew that the appellant had been convicted

of robbery at some earlier date and that a suspended sentence had been imposed; but he clearly did not know of the two offences of robbery for which the sentences were imposed on 12th December, 1991. He sentenced the appellant on the basis that:-

- (1) the appellant had not been to prison before; and
- (2) the sentence he was imposing was the only sentence the appellant would be regarded as having been serving from 13th December, 1991, to the date when the sentence was imposed.

It is impossible, therefore, to know what sentence he would have regarded as appropriate if he had known of the earlier convictions and sentences.

The facts of the offence for which he sentenced the appellant were recorded by His Lordship as follows:-

"The two accused persons are charged with the Manslaughter of Raj Mani Goundar (the deceased) a taxi driver of Suva.

On 2nd December 1991 the deceased was driving his taxi BW636 in the Suva area. At about 8pm three police officers from Raiwaga Police Station were patrolling the Bhindi Sub-Division in Vatuwaga when they saw the deceased's taxi parked near a roundabout. They saw two male figures standing by the taxi but when the police stopped, the figures ran away.

The deceased's body was found lying on the grass verge a few feet away from the taxi. He had head injuries and was dead. The Post-Mortem revealed that he died of head injuries. He had bruises on his cheek, left eye, right forearm, chest and shoulder region and an incised wound on his head with a corresponding fracture of the skull.

The accused were traced and interviewed

under caution. The 1st accused Serukalou admitted that on the night of 2/12/91 he, the 2nd accused and 2 others drank 2 cartons of beer at the DAV School in Nabua. The 1st and 2nd accused then planned to rob a taxi driver. They boarded the deceased's taxi and asked to be taken to Rifle Range. There at the roundabout the 2nd accused got hold of the deceased and he was then dragged out of the taxi. They both assaulted him causing him to fall onto the pavement and hit his head on the concrete. The 2 accused then searched the taxi but the Police van arrived and they ran away. The 1st accused had taken the deceased's wrist watch from him during the assault.

The 2nd accused in his statement under caution agrees with the 1st accused's version. He said that when the taxi stopped he (the 2nd accused) choked the driver's neck, they struggled, and he then punched the deceased. When the deceased tried to get up they punched him again and he fell onto the pavement. The 2nd accused took \$40.00 from the taxi after the assault.

Both accused were charged with Murder and have been remanded since 13/12/91."

In passing sentence His Lordship commenced as follows the statement of his reasons for the sentence he imposed:-

"I have carefully considered all the factors in favour of the accused that were so forcefully put across by their counsel, Mr. John Semisi. I agree that their intention was not to kill but to rob which is bad enough. Both accused have also promptly pleaded guilty which in itself is in some measure indicative of remorse. All the same I cannot overlook the wanton and reckless manner in which both accused punched the deceased as a result of which he fell and unfortunately hit his head on a concrete surface with fatal consequences."

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"... deterrence should be the key factor in sentencing in cases of violence particularly

where the victims are taxi-drivers who are being frequently harassed and robbed by drunken thugs."

We would respectfully agree with those views.

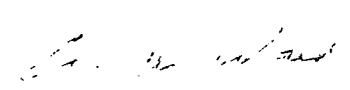
Having regard to the fact that, after the suspended sentences were imposed on the appellant in October, 1990, for two offences of robbery, and during the period of the suspension, the appellant committed first the two robberies for which he was sentenced on 12th December, 1991, and then the manslaughter in this case, we are satisfied that the sentence of 5 years' imprisonment was entirely appropriate. However, in order that the total period of imprisonment to be served on all the sentences should not be oppressive, and when regard is had for the appellant's age, 18 years in August, 1992, it is appropriate that the sentence of 5 years' imprisonment should be served concurrently with those imposed on 12th December, 1991, and those activated on 23rd December, 1991. Nevertheless, since in principle suspended sentences which are activated should be served consecutively with sentences imposed for other offences, we have decided that the sentence of 5 years' imprisonment should not be served concurrently with the other sentences from 12th December, 1991, but only from the date when the sentence was imposed by the learned trial Judge, 25th August, 1992, a date nearly nine months later.

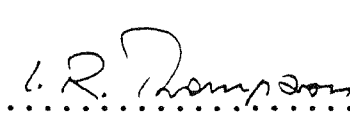
Accordingly the appeal will be allowed by varying the order as to the date from which the sentence was to commence.

Orders

Appeal allowed.

Sentence of 5 years' imprisonment affirmed, but to commence on 25th August, 1992, and to be served concurrently with the sentences imposed in earlier cases.


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Mr. Justice Gordon Ward
Judge of Appeal


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Mr. Justice I. R. Thompson
Judge of Appeal