

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0033 OF 2001S
(High Court Criminal Case No.HAA0057 of 2001)

BETWEEN:

JONETANI SEREKA
JONE CALEVU
JEREMAIA DONU
NOA TUBAKA
VILIAME TAUFA
LIVAL RAVONOKULA
SITIVENI NAQIRI

Appellants

AND:

THE STATE

Respondent

Coram: Reddy J R, President
Eichelbaum, JA
Gallen, JA

Hearing: Monday, 13th May 2002, Suva

Counsel: Ms M. Waqavonovono for the Appellants
Mr Gregor Allan for the Respondent

Date of Judgment: Monday, 13th May 2002

TRANSCRIPT OF ORAL JUDGMENT OF THE COURT

After what was described as a takeover of the Naboro prisons a number of inmates were charged with various offences. Among the charges laid against those involved in this appeal, was wrongful confinement under s253 of the Penal Code. They pleaded guilty and after sentence appealed to the High Court. The Judge found the charge

of wrongful confinement to be defective, as it failed to specify the mens rea element of the offence. The Judge substituted convictions for the lesser offence of wrongful confinement under s256.

Another case raising similar considerations, *Cerevakawalu v the State* reached this Court. In a judgment dated 22 November 2001, the Court affirmed the High Court ruling in the present proceedings, that the charge was defective. In that case all the charges were quashed.

Evidently *Cerevakawalu v the State* did not raise the issue of the correctness of the course taken in the High Court in the present case, of substituting a conviction on a lesser charge. However, as other cases were pending where this issue was likely to arise, counsel for the State asked the court to consider it. The Court expressed the opinion that as the "entire proceeding" was a nullity, the convictions should have been quashed.

After that decision became available the present appellants filed an application for extension of time and an Appeal on Question of law. The State did not oppose the application for extension of time. It is appropriate, and we extend the time until the date of the filing of the appeal.

The State accepted that the defect in the charge was identical with that present in *Cerevakawalu*. It accepted that in accordance with that judgment, the

convictions of the appellants on the s256 charge and the sentences imposed in respect of those convictions should be quashed.

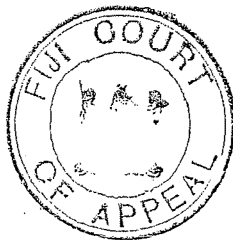
In respect of the other convictions arising from the same events the appellants did not submit the court should amend the sentences. Those sentences will stand.

Result

In respect of each appellant -

Time for appealing extended until date of filing of the Notice of application.

Appeal allowed; order quashing conviction and sentence for wrongful confinement under s256 of the Penal Code.



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Reddy J R, President

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Eichelbaum, JA

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Gallen/JA

Solicitors

Office of the Director of Legal Aid Commission, Suva for the Appellants
Office of the Director of Public Prosecutions, Suva for the Responden