IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 32 of 2018
(on appeal from Lautoka CC559.13)

SERU ARIVAKISATI

Appellant

v

STATE

Respondent

Ms Narara (L.A.C.) for the Appellant
Ms. Uce for the Respondent

Date of Hearing : 4 December 2018
Date of Judgment : 11 December 2018

JUDGMENT

1.] On the 7th day of December 2015, in the Magistrates Court at Lautoka the appellant was sentenced to 24 months imprisonment for one count of burglary and 6 months for a second count of theft. The Magistrate ordered that these concurrent sentences be served consecutively to sentences he was serving at the time.

2.] The appellant appeals that sentence on the single ground that the sentence was in contravention of Section 22 of the Sentencing and Penalties Decree which provides that a new sentence be served concurrently with any sentence that the accused might be serving. Any deviation from this principle must be explained by the Magistrate.

3.] The Court has today declared this appellant to be a habitual offender in the light of his appalling record of dishonesty and invasion of property offences ; a state that would allow for consecutive sentences to be passed (s.22 (2)(c) of S. and P. Act) .

4.] HOWEVER

In perusing the record of proceedings below, it is noted that there is no record of judgment being delivered and convictions entered. The original Court file has been perused and searches made in the Magistrates Registry.

5.] There was no judgment and no conviction.

6.] It is breathtaking that a police prosecutor present on sentencing, would not remind the Magistrate of these omissions.

7.] As a result there has been a gross miscarriage of justice in this case.

8.] The sentence is set aside.

9.] To that extent it is unnecessary to consider the appellants appeal against sentence.

10.] This is an old case (from July 2013) and the appellant has already served a good part of his sentence.

11.] No retrial is ordered.

HIGH COURT OF FIJI LAUTOKA

P.K. Madigan

Judge

High Court Lautoka