

THE DIRECTOR OF PUBLIC PROSECUTIONS

A

v.

JIUTA RASEA

[SUPREME COURT, 1975 (Grant C. J.), 31st July]

B

Appellate Jurisdiction

Criminal law—principles of sentencing—whether power to backdate effective date of term of imprisonment—whether proper for suspended term of imprisonment to be imposed concurrently with immediate term—whether proper to impose different types of sentences for several offences arising out of the same criminal transaction.

C

The respondent was convicted on two counts of dishonesty and sentenced to two terms of imprisonment, one of which was suspended. The magistrate backdated the effective dates of the terms.

Held:

D 1. There is no power to backdate the effective date of a term of imprisonment.

2. It is wrong in principle to impose both a suspended and an immediate term of imprisonment.

3. Where two or more offences arise out of the same criminal transaction and are founded on the same facts it is wrong to impose different types of sentence.

E

Cases referred to:

R. v. Sapiano 52 Cr. App. R. 674

R. v. Butters 55 Cr. App. R. 515

R. v. Uraia Tukana Fiji Cr. App. 105/73 (Unrep.)

F

Appeal against sentence imposed in the Magistrate's Court.

M. Jennings for the appellant

Respondent in person.

GRANT C. J.:

G

On the 28th April 1978 at Taveuni Magistrates Court the respondent, having been convicted on his own plea of fraudulent falsification of accounts contrary to section 340(1) of the Penal Code (hereinafter called the first count) and of fraudulent conversion contrary to section 311 (1)(c)(i) of the Penal Code (hereinafter called the second count), was sentenced to six months' imprisonment on the first count and two years' imprisonment on the second count.

H

With regard to the first count, the trial Magistrate ordered the sentence to be backdated to the 14th April 1978 being the date on which the respondent pleaded

guilty. As to the second count, he again ordered the sentence to take effect from the 14th April 1978, ordered it to run concurrently with the sentence on count one, and further ordered that it be suspended for a period of three years. A

The Crown has appealed against the sentence as being wrong in principle and manifestly lenient.

A Magistrates Court has no power to backdate a sentence of imprisonment or to order it to run from any date earlier than the date on which the sentence is imposed. If a Magistrates Court wishes to take into account the period during which an accused has been in custody, or the time that has elapsed between his plea of guilty and the date of sentence, it may do so by an appropriate reduction in the sentence that otherwise would have been imposed. B

Further, it is wrong in principle to subject a person to both an immediate and a suspended prison sentence, as the main object of a suspended sentence is to avoid sending the offender to prison (*R. v. Sapiano* 52 Cr. App. R. 674; *R. v. Butters* 55 Cr App. R. 515; and *R. v. Uraia Tukana* (Suva Cr. App. No. 105/73)). C

Finally, as both offences arose out of the same criminal transaction and are founded on the same facts, there is no justification for imposing different types of sentence.

The respondent, who was employed by Rabi Holdings Limited as a copra buyer in Taveuni, fraudulently converted to his own use the sum of \$5,570.67 which had been entrusted to him by Rabi Holdings Limited to purchase copra on their behalf, and in an apparent attempt to cover up the defalcation he made false returns purporting to shew that he had purchased copra to the value of \$1,345.59 on behalf of Rabi Holdings Limited when no such purchase had been made. D

The trial Magistrate called for a probation report which disclosed that the respondent is fifty years of age, with a previous good record. He was a member of the Royal Fiji Military Forces from 1952 to 1956 during which time he served in Malaya. He ultimately worked as a copra grader for W. R. Carpenters, and in 1964 contracted leprosy and was admitted to Makogai Hospital until his discharge in 1969. He then worked for Fiji Times as a paper cutter until 1974 when he joined Rabi Holdings. The explanation which he gave for committing these serious offences was that he had been left short of funds because Rabi Holdings were paying his salary to his wife in Suva who was utilising the whole of it to support their children. After a careful consideration of the probation report the trial Magistrate considered that a sentence of imprisonment was necessary; and while one has sympathy with a man of the accused's age and previous history, I am impelled to the same conclusion. E F

The sentences imposed by the trial Magistrate are quashed and in substitution therefor, after taking into account the matters to which I have referred, the respondent is sentenced to six month's imprisonment on Count 1, and to twelve month's imprisonment on Count 2, the sentences to run concurrently with effect from the 28th April 1978. G

Appeal allowed; sentence varied H