

EMOSI BANUVE

v.

THE STATE

[HIGH COURT, 1989 (Fatiaki J) 8 December]

Appellate Jurisdiction

B *Sentence- larceny by servant- Penal Code (Cap. 17) Section 274.*

The High Court once again emphasised that imprisonment is the usual sentence to be imposed for breaches of trust. It also stressed the desirability of uniformity in sentencing. In view of the delay in bringing the charges and the plea of guilty tendered the sentence of imprisonment was reduced in length.

C Cases cited:

Attorney-General v. Mitieli Kila 15 FLR 160

Michael Parma Nand v. R 12 FLR 45

T. Fa for the Appellant

D *S. Senaratne* for the Respondent

Appeal against sentence imposed in the Magistrates' Court.

Fatiaki J:

E The appellant was convicted on the 1st of June 1989 by the Suva Magistrates Court after he pleaded guilty to an offence of Larceny by Servant. Thereafter the learned Chief Magistrate before whom the appellant had pleaded guilty adjourned the case for 6 days and took the unusual course of admitting the appellant to bail pending sentence.

F On the 7th of June the learned Chief Magistrate sentenced the appellant to 3 years imprisonment. In doing so he observed inter alia:

G "The offence is serious as the accused was placed in a position of trust which he had obviously abused. While an effective system of internal checks could have discovered the discrepancy much earlier rather than leaving it to such a large amount totalling \$4,839.01, nevertheless the accused should not have taken advantage of such laxity, if indeed there was any on the part of management."

The appellant appeals against the sentence as being too severe, harsh and excessive in the circumstances.

Learned counsel for the appellant urged in support of the appeal that the appellant is a first offender in so far as offences of this nature are concerned, the fact that he pleaded guilty and his personal circumstances.

In this latter regard the appellant is 39 years of age, married with a son and although he was suspended from his employment when the shortfalls in the banking and liquor stocks were first detected in March 1988, he continued to be gainfully employed on his farm planting cash crops. A

Counsel also cited several decisions of the High Court in which offenders in a not dissimilar situation to the appellant were given sentences that did not result in their immediate incarceration.

But facts and circumstances vary from case to case and in passing sentence courts are inevitably guided by the particular facts of the case before them. That is not to say this court is unaware of several decisions where non-custodial sentences have been imposed for offences such as that for which the appellant has been convicted. B

In Attorney-General v. Mitieli Kila 15 FLR 160 it was held: C

“Although imprisonment is usually the only appropriate sentence where there has been a breach of trust by an employee, it is not necessarily so in every case.

The limited guidance provided by the legislature for an offence of Larceny by Servant is the maximum penalty of 14 years imprisonment. D

Learned State Counsel in opposing the appeal pointed to the completeness and care that the learned Chief Magistrate took in assessing the sentence in this case. With those submissions I am inclined to agree.

However it is noteworthy that although the offence was uncovered in March 1988, charges were not laid until June 1989 (some 15 months later). In that time the appellant must have agonised as to his future. E

This Court has also obtained statistics of sentences passed in the Suva Magistrate Court over the past 10 months of this year which confirms the view expressed by learned counsel for the appellant, that the present sentence is somewhat of a departure from the normal type and length of sentences being passed by other Magistrates of the same court. F

It was said by Knox-Mower, P.J. in Michael Parma Nand v. R. 12 FLR 45 when he halved a sentence of imprisonment in a sentence appeal before him:

“ It is desirable that the Supreme Court (now High Court), through its appellate jurisdiction, should, wherever possible, ensure that there is some measure of uniformity in the sentences imposed by the courts below.” G

I accept all that the learned Chief Magistrate said in sentencing the appellant, I also accept that a custodial sentence was warranted in the particular circumstances of this case.

A The length of the sentence however, does appear to be on the high side and although hesitant to interfere with the quantum of sentence imposed, nevertheless, having regard to the fact that the accused pleaded guilty and the fact that he made a full confession of his guilt at all stages, this Court is of the view that some allowance ought to be made.

Accordingly the sentence is reduced to one of 18 months imprisonment with effect from the 7th of June this year.

B *(Appeal allowed; sentence varied.)*

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