

**JOSUA RALULU**

v.

**THE STATE**

[HIGH COURT, 1991 (Jesuratnam J) 10 January]

## Appellate Jurisdiction

*Sentence- whether a sentence of imprisonment imposed on a prisoner already serving a sentence of life imprisonment should be concurrent with that life sentence or consecutive to it.*

The Appellant who was serving a sentence of life imprisonment committed a further offence for which he was sentenced to a term of imprisonment consecutive to that he was already serving. On appeal the High Court HELD: that in such circumstances a further term of imprisonment should be served concurrently.

Case cited:

*John Patrick Foy* [1962] Cr. App. 290

Appellant in person  
*S. Hettige* for the Respondent

Appeal against sentence imposed in the Magistrates' Court.

**Jesuratnam J:**

In this case the appellant was charged in the Magistrates' Court of Suva with having escaped from lawful custody on 7th April 1990 contrary to section 138 of the Penal Code.

He pleaded guilty and was convicted and sentenced on 7th June 1990 by the learned Chief Magistrate to 12 months' imprisonment to run consecutive to his present term of life imprisonment.

The appellant has appealed against the sentence on the ground that it is harsh and excessive.

In mitigation the appellant had stated in the Magistrates' Court that, contrary to the outline of facts made by the prosecution, he was not handcuffed at the time of his escape and that he was not arrested but that he surrendered to the Police. While the prosecution had accepted the latter assertion it said nothing on the former. The learned Magistrate apparently did not pursue the point but had cut in with the remark that the issue of handcuffs was not relevant as accused had in any case escaped from lawful custody. While there is an element of truth in this view it seems to me that the issue of handcuffs would go to the gravity and daring of the offence which certainly will affect sentence.

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A However a consecutive sentence on an offender serving life imprisonment seems incongruous. It appears to be a contradiction in terms. In fact the learned Magistrate seems to have realised the futility of the situation when he said "I am in some difficulty as the accused is serving a life sentence and whether a concurrent or consecutive sentence will make any sense to what he is now serving."

B Nevertheless he sentenced the appellant to "12 months' imprisonment consecutive to his present sentence"

C It may be of interest to cite the English case of John Patrick Foy (1962) Cr. Appeal Rep. 290 where the Court of Appeal set aside a sentence of 14 years to run consecutively to a sentence of life imprisonment which was being served by the appellant. The Lord Chief Justice said at page 292 "Life imprisonment means imprisonment for life. No doubt, many people come out from life imprisonment while they are still alive, but if such a person does come out, it is only on licence and the sentence of life imprisonment remains on him until he dies. Accordingly, if the court passes a sentence of any period of years consecutive to life, the sentence is no sentence at all in that it cannot operate until the prisoner dies. The court feel that, though they cannot substitute any sentence in this case, it is right to say that the sentence passed was wholly invalid and that the proper sentence would have been one of fourteen years' concurrent with the sentence of life imprisonment."

D In all the circumstances of the case, therefore, I direct the sentence of 12 months' imprisonment passed on the appellant to run concurrently with the life imprisonment and not consecutively.

E The appeal is allowed to this extent.

*(Appeal allowed; sentence varied.)*

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