

JOLAME SAUKURU & OTHERS

v.

THE STATE

[HIGH COURT, 1990 (Saunders J) 8 November]

Appellate Jurisdiction

Sentence- imprisonment- activation of suspended sentence of imprisonment- when mandatory- Penal Code (Cap 17) Section 28.

The Appellants who had been given suspended sentences of imprisonment for committing robbery with violence only a few days previously again committed the same offence however the Resident magistrate declined to activate the suspended sentences. The High Court HELD: in the absence of exceptional circumstances it is mandatory to activate a suspended sentence where a further offence is committed during the operational period of the suspended sentence.

Cases cited:

Director of Public Prosecutions v. Apete Pulumeau 19 F.L.R. 71
Kuar Vijay Bhan v. Reginam. 18 F.L.R 27

Appellant in person
I. Wikramanayake for the Respondent

Appeals against sentence imposed in the Magistrates' Court.

Saunders J:

There is nothing excessive about the sentence of 2 years imprisonment passed on each appellant.

I am concerned that the suspended sentences were not activated. The second and third Appellants each committed exactly the same offence – robbery with violence, eleven days after being convicted of 5 offences of robbery with violence and being put on a suspended sentence. This must show the utter contempt with which each treated the order of the Court.

In *Director of Public Prosecutions v. Apete Pulumeau* 19 F.L.R. 71, Mishra J said (p. 72):-

“The wording of this section (that is 28 of the Penal Code) clearly requires that a suspended sentence of imprisonment be activated in its entirety, except where exceptional circumstances make it unjust to do so.”

In *Kuar Vijay Bhan v. Reginam.* 18 F.L.R. 27 at page 30. Goudie J says. at

paragraph F:-

A “However it is expressly provided in the Section and it is mandatory that the Court SHALL order that the suspended sentence shall take effect with the original term UNALTERED unless the court is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence and where it is of that opinion, the Court shall state its reasons.”

B The reasons given by the trial magistrate in the case before this Court as recorded were:- “suspended sentence of 1st, 2nd and 3rd accused need not be activated as I think that the above custodial sentences of 2 years would be adequate to reform the accused.”

C That is not a sufficient reason. If the trial magistrate had thought that by activating the suspended sentences the total sentence would have been excessive, that would have been sufficient reason - (DPP v. Apete Pulumeau).

D But this Court, taking into consideration the behaviour of the appellants, cannot accept that the sentences would be excessive if those suspended were added to the 2 years. Robbing women in a bus as a gang is an extremely serious offence, easy to commit and causing great public concern.

I commend to the trial Magistrate the words of Goudie J, at page 31 of the Kuar Vijay Bhan case which read as follows:-

E “If a person is under suspended sentence and commits a subsequent offence and he is not called upon to show cause why he should not be punished for such subsequent offence, the whole object of the suspended sentence is defeated and the powers and authority of the Court brought into contempt.”

F I order that appeals be dismissed and further that the suspended sentence of each appellant be activated in full.

(Appeals dismissed; sentences varied.)

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