

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Labasa Criminal Appeal No. 19 of 1978

000198

Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

and

RAJA HUSSEIN s/o BADULLA

JUDGMENT

On the 25th May 1978 at Nabouwalu Magistrates Court the respondent was convicted on his own plea of larceny of a bull contrary to section 307 of the Penal Code and was sentenced to three months' imprisonment, which sentence the trial Magistrate ordered to commence running forthwith.

The Crown has appealed on the ground that this order should not have been made.

The respondent has six previous convictions, the most recent being, *inter alia*, official corruption contrary to section 98(b) of the Penal Code and giving false information to a public servant contrary to section 135(b) of the Penal Code, for which he received an overall sentence of twelve months' imprisonment on the 23rd May 1978. Although these offences were committed subsequent to the present offence, he was sentenced for them two days before sentence was passed herein by the same Magistrate, so that the effect of the Magistrate's order in the present case is that the sentence of three months' imprisonment imposed on the 25th May 1978 merges in the sentence of twelve months' imprisonment imposed two days earlier for entirely different offences committed on another occasion and wholly unrelated to the present offence, resulting in the respondent receiving no punishment for the larceny of a bull.

2.

In the circumstances there was no justification for the trial Magistrate ordering the sentence to commence running forthwith, and had this order not been made the sentence would by operation of law have commenced running after the expiration of the overall sentence of twelve months' imprisonment imposed on the 23rd May 1978 (section 28(4) of the Penal Code).

Further, a sentence of three months' imprisonment for the prevalent and serious offence of cattle theft is manifestly inadequate.

The sentence is quashed and in substitution therefor the respondent is sentenced to a term of twelve months' imprisonment consecutive to the sentences imposed on the 23rd May 1978.

(Sgd.) Clifford H. Grant
Chief Justice

Suva,
31st July 1978.