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IN THE SUPREME COURT OF FIJI  
Appellate Jurisdiction  
CRIMINAL APPEAL NO. 10 OF 1981

000209

Between:

AMELIA WAQA

APPELLANT

- and -

R E G I N A M

RESPONDENT

Appellant in Person.

Mr. R. Lindsay for the Respondent.

J U D G M E N T

The defendant was on the 8th December, 1980, convicted by the Acting Chief Magistrate, Suva, of nine offences, namely three of Forgery, Contrary to section 371(2)(b) of the Penal Code and 6 related offences of Uttering Forged Documents and receiving money on such documents. Thirtysix other offences were taken into account. She was sentenced to a total of 18 months imprisonment. The sentences imposed for each count of forgery and receiving money on forged documents was 6 months imprisonment. The sentence for each offence of uttering forged documents was 3 months imprisonment. The result of grouping the three related offences together to be served concurrently and each group to be served consecutively to each other resulted in the appellant being sentenced to a total of 18 months imprisonment which I do not consider excessive. All sentences were suspended for 2 years.

While the appellant has appealed against her sentences her real complaint is the fines which the learned Magistrate imposed on her. On the convictions for each of the three Counts of Receiving Money on Forged Documents he imposed a fine of \$200 in default 3 months imprisonment. \$100 in respect of each fine was ordered

to be paid to the complainant.

The appellant who pleaded guilty to all 9 counts is a young Fijian woman. She married the complainant, a member of the Royal Fiji Military Forces, in March 1979. He went to Lebanon in September 1979 but before doing so he left his bank pass book with the appellant. The appellant told the Magistrate that her husband wrote from Lebanon advising her he did not want her and when she knew he would not support her she then committed the offences and withdrew a total of \$1,048 from her husband's bank account by forging his signature to withdrawal slips. She was charged only in respect of \$300 of that sum. She told the Magistrate she could repay the money by the end of January, 1981. This would be effected by her father selling his cattle.

This offer no doubt prompted the learned Magistrate to impose fines and direct that part of the fines be paid to the complainant. The Magistrate apparently had doubts about her ability to repay because he advised her to come back to Court if she was unable to pay.

The appellant is presently employed as a sales assistant. Her take home pay is \$25 a week. She has no children.

This case is not the usual one involving forgery by a stranger. She stole her husband's money clearly to get as much out of him as she could before he finally abandoned her. She has no previous convictions and the Magistrate recognised her plight by giving her a chance and suspending her sentences for 2 years.

The appellant is clearly not in a position to pay the \$600 in fines.

Mr. Lindsay for the Crown does not in all the circumstances support the imposition of the fines.

The Magistrate may not have imposed the fines but for the appellant's assurance that she could repay the money. In my view, however, no fines should have been

imposed unless there were some prospects of the appellant being in a position to pay them. A young Fijian woman in the appellant's position has little or no prospects of paying such a substantial sum and any promise that her father would pay should have been discounted. It is wrong in principle in my view that a convicted person with affluent parents or relatives should evade punishment that others with not so well placed connections have to suffer.

The complainant has his civil remedies and I do not consider the Court should in the circumstances assist him by ordering part of her fine to be paid to him. There are cases where such assistance may be proper but this instant case is not one in my view.

D.A. Thomas in his "Principles of Sentencing" at p.219 states that the main principle governing the use of fines is that the offence concerned must be one for which a sentence of imprisonment is not required. The learned author also stated at p.222 :

"The importance of the offenders capacity to pay as a mitigating factor has been stressed in many cases. The Court has frequently stated that to impose a fine which is beyond the capacity of the offender to pay will merely lead to his committal to prison in default of payment for an offence for which a sentence of imprisonment was originally considered inappropriate."

I allow the appeal to the extent that the fines in respect of counts 3, 6 and 9 are cancelled.

*R.G. Kermodé*

(R.G. KERMODE)

ACTING CHIEF JUSTICE

SUVA,

15 MAY, 1981.