

Appellate Jurisdiction
Criminal Appeal No. 24 of 1982

000351

Between:

JOHN BAL NAIDU

and

REGINAM

Appellant in Person.

Mr. D. Fatiaki for Respondent.

JUDGMENT

On 30th September 1981 at the Suva Magistrate's Court appellant was charged on thirteen counts with the following offences: larceny by servant (Count 1), forgery (Counts 2, 5, 8 and 11), uttering forged document (Counts 3, 6, 9 and 12) and receiving money on forged document (Counts 4, 7, 10 and 13). Appellant pleaded guilty to all these charges and was given a total effective sentence of six years' imprisonment.

The appellant is appealing against his sentence on the ground that it is harsh and excessive having regard to all the circumstances of the case.

At all material times the appellant was employed as a senior accounts clerk with the Fiji Electricity Authority at Lautoka. Between July and September 1981 appellant forged four cheques belonging to his employers and in respect of which he received monies totalling close to \$90,000. According to the record of proceedings in the court below out of that amount, \$26,119.09 has not been recovered.

However, at the hearing of the appeal the appellant stated that since his trial in the court below further sums had been recovered from and with the cooperation of members

of his family and as far as he knew only about \$12,000 could now be said to be still unaccounted for. This Court is not able to substantiate one way or the other the true position in regard to these alleged repayments of money to the Fiji Electricity Authority.

Appellant has two previous convictions which occurred in 1968 for larceny by servant. They were apparently trivial in nature as he was only bound over and fined \$40. Because of the long time gap between those previous convictions and the present one he ought in my view and in fairness to him to be treated as a first offender for the purpose of sentencing in this case. Appellant is married with four very young children. His plea of guilty to all the charges is a factor which must weigh greatly in his favour. These offences, as claimed by appellant, may well have been committed because of a recent family disaster when practically all the family property and assets perished in a fire. Added to this was the fact that both his parents are incapacitated with illness and he had to care for them. Appellant has not only lost a good and secure job but his prospect of obtaining another of comparable importance and worth in the future is virtually nil. There can be no doubt that appellant will for a long time to come continue to suffer the consequences of his criminal action.

Having regard to all the circumstances of this case I am satisfied that the total effective sentence of six years' imprisonment which was imposed upon appellant is much too long and ought to be varied. Accordingly I will allow the appeal and set aside the sentences passed upon him in the court below and in lieu thereof substitute the following -

- Count 1 - 2 years' imprisonment
- Count 2 - 2 years' imprisonment
- Count 3 - 1 year imprisonment
- Count 4 - 3½ years' imprisonment
- Count 5 - 2 years' imprisonment
- Count 6 - 1 year imprisonment
- Count 7 - 3½ years' imprisonment
- Count 8 - 2 years' imprisonment

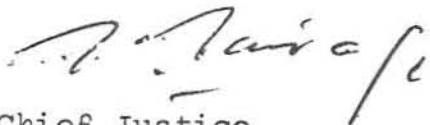
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Count 9 - 1 year imprisonment
Count 10 - 3½ years' imprisonment
Count 11 - 2 years' imprisonment
Count 12 - 1 year imprisonment
Count 13 - 3½ years' imprisonment

The sentences are to run concurrently.


Chief Justice

Suva,
11th June 1982.