REGINA -v- PAUL FINEANGANOFO

High Court of Solomon Islands
(Muria, CJ.)
Criminal Case No. 13 of 1995

Hearing: 24 July 1995
Judgment: 24 July 1995

DPP for the Appellant
Andrew Radclyffe for the Respondent

MURIA CJ: Accused Paul Fineanganofo had been charged with the offence of fraudulent conversion before the Central Magistrate's Court.

He was alleged to have converted $9,756.00 to his own use and benefit having been given to him by his employer Home Finance Corporation for his return airfares to Tonga and two nights accommodation in Fiji. He was convicted and sentenced to 2 years imprisonment which had been suspended in full for a period of 2 years.

Against that decision the learned DPP brought this appeal alleging two grounds namely,

1. *That the learned Chief Magistrate erred in law in imposing the two years sentence as being two lenient.*

2. *That the learned Chief Magistrate erred in law when he suspended the sentence in full.*

The issues here are straight forward: Whether the sentence of two years was wrong and whether the learned Magistrate was wrong in suspending it in full. The learned DPP argued that the facts as disclosed showed that the offence was serious and custodial sentence was inevitable. The learned Director further argued that in the light of the seriousness of the offence, a sentence of two years is too lenient. The Learned director sought to impress upon the Court that argument in the light of the fact that the learned Chief Magistrate had the sentence suspended in full.

Mr. Radclyffe for the Respondent argued that the learned Chief Magistrate was not in error when imposing the two year sentence and suspending in full. Counsel argued that the learned Chief Magistrate has not acted on any wrong principle and had considered all matters placed before him before coming to the sentence which he imposed on the Respondent in this case.

The principle to be applied in an appeal such as this had been laid down in *Saukoroa -v- R (1983) SILR 275*, *Mulele -v- DPP (1985/1986) SILR 145* and *Berekame -v- DPP(1985/1986) SILR 272*. Those cases following *Skinner -v- The King (1913) 16 CLR 336*, laid down the principle that a Court exercising

appellate jurisdiction will not interfere with the trial judge's discretion in passing sentence unless it is manifestly excessive or manifestly insufficient because, for example, the judge acted on wrong principle or has clearly overlooked or understated or misunderstood some salient feature of the evidence.

The learned Director in this case basically argued that the suspension of the sentence watered down the seriousness of the offence committed by the Respondent and as such the sentence ought not to be suspended at all. He further argued that a suspension together with a fine would have some deterrent effect in this case.

I have considered the argument put by the learned Director and unfortunately I am unable to support his contention. It has not been shown to this Court that the learned Chief Magistrate had acted on any wrong principle or overlooked or understated or overstated or misunderstood any salient feature of the evidence in this case. As far as I can glean from the record, the learned Chief Magistrate properly considered all the aspects of the case before exercising his discretion in this case. I do not see in any way that he erred in coming to the sentence he imposed in this case.

The sentence is neither wrong in principle nor too lenient.

Appeal dismissed.

(Sir John Muria)
CHIEF JUSTICE