IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

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Criminal Appeal No. 1 of 1966.

Between:

FRANCIS WILLIAM HANNAGAN Appellant

- and -

REGINAM Respondent

A. Lateef for Appellant
B.A.Palmer and T.U. Tuivaga for the Respondent.

Marsack, J.A. JUDGMENT

The appellant was on the 21st December, 1965, convicted in the High Court of the Western Pacific sitting at Honiara, on a number of counts involving dishonesty in respect of Government funds. On each of three counts the appellant was sentenced to 2 years' imprisonment and on each of 15 other counts to 12 months' imprisonment, all the sentences to run concurrently. This appeal is brought against sentence only.

The appellant, who is an Australian and a qualified surveyor, was employed on contract with the Government in the British Solomon Islands Protectorate. He is 38 years of age and has a wife and 7 children, the eldest of whom is 11 and the youngest about 3 months old. The family has returned to Australia.

The appellant performed his professional duties satisfactorily, and witnesses as to character called at the trial said that he had an excellent general reputation. He had previously a clean record. The explanation given by the appellant as to his lapse into dishonesty was that there was some confusion over his emoluments and on one occasion he was, by mistake, paid an additional month's salary which he later found it difficult to repay. His financial troubles culminated in the fraudulent conversion of a total sum of approximately £260,

and the other offences of forging and uttering resulted from attempts by the appellant to cover up the thefts.

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For the appellant it is urged that he has admitted his guilt and been frank throughout; that restitution of £260 has been made in full; that until the present series of offences he had borne an excellent character; that he may, therefore, be regarded as a first offender; that the suffering and distress caused to his wife and family by his imprisonment are, on account of the circumstances of the case, unusually grave; that by way of loss of contract gratuity and accrued leave he will, as a result of Government disciplinary action, lose a sum of money which he estimates as £1,600.

It is counsel's contention that these factors in favour of the appellant were not given adequate weight by the learned trial Judge when sentence of 2 years' imprisonment was passed.

In connection with the loss of gratuity and leave the evidence of the Acting Commissioner of Lands and Surveys at Honiara was to this effect:

> "Disciplinary action will follow this conviction. It will be dismissal and loss of contract gratuity and also accrued leave.
>
> Arrangements have been made totake his wife and children to Australia and he will be liable to refund the passage money."

In the course of his judgment the learned trial Judge said:

> "Hardship resulting to his family and consequential penalties, such as disciplinary action in respect of a Government servant, were not matters which the Court could properly take into account as relevent to an assessment of sentence."

With great respect we fell that although the mere possibility fo disciplinary action being taken by an employer, with resultant financial loss to the offender, would not be a matter which the Court could properly take into account in assessing penalty, yet when there is definite evidence that such disciplinary action will be taken and that a substantial financial penalty to the accused person will necessarily be involved, the, in our opinion,

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it is proper for the Court, if the Court thinks fit, to give weight to matters such as this in assessing the sentence to be imposed. It is a matter for the Court: and if the Court in its discretion sees fit to give consideration to other heavy penalties which, to the knowledge of the Court, will be inflicted on the offender independently of my sentence passed by the Court then, in our opinion, the Court as a matter of principle is entitled in its discretion to impose a lesser sentence than it may well have done but for those circumstances.

There is one further respect in which we feel that the learned trial Judge has interpreted the facts of the case more heavily against the appellant than these facts strictly warrant. He says:

> "A specially unpleasant feature of the case was the accused's endeavour to implicate his colleague Mr. Aston in which he had succeeded to the extent that Mr. Aston had, in clear dereliction of his duty, failed to report to his superiors the true state of the imprest account."

We do not think that the evidence appearing on the record is sufficient to support the inference which has been drawn by the learned trial Judge. We do not read the approach to Mr. Aston, shown in appellant's letter of 14th September, 1965, as an at attempt to implicate Mr. Aston in the crimes which the appellant had admittedly committed. In our view the approach to Mr. Aston was merely a confession of the appellant's wrong-doing with an expression of appellant's hope that Mr. Aston would not find it necessary to inform his superiors. But he proceeds:

> "I am entirely in your hands and if, of course, you should not be prepared to implicate yourself, then of course do not do so."

In these circumstances we conclude that the learned trial Judge has taken a view of the appellant's actions more unfavourable than the circumstances really warranted. Accordingly, in our view, the sentence is heavier than it would have been if due regard had been paid to the principles we have stated.

The question of the proper sentence in this

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case is a very difficult one. Certain alternatives to imprisonment available, particularly in the case of first offenders, in countries like Australia are definitely not available in the British Solomon Islands Protectorate where any sentence passed must be served. It was not suggested that a fine would meet the case or would be practicable here. The offences from their very nature are serious, and must be met by a penalty which can be properly considered adequate. We consider that an adequate penalty would be 12 months' imprisonment.

In the result we quash the sentences of 2 years' imprisonment in respect of Counts 1,2 and 18 and substitute therefor a sentence of 12 months' imprisonment on each count. All sentences are to run concurrently.

(sgd) R.H.Mills-Owens

PRESIDENT.

(sgd) C.C.Marsack.

JUDGE OF APPEAL.

(sgd) R. Knox-Mawer.

JUDGE OF APPEAL.

SUVA.

24th March, 1966.