When the Fiji Ct of Appeals has jurisdiction over appeals from the Solomon Islands

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IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No.46 of 1981

Appellant convicted of fraudulently converting money for his own use and for embezzling money paid as fines into the Magistrates Court, Tulagi, Solomon Islands.

Between:

FRANKLIN PITAKAKA — Appellant

and

REGINAM — Respondent

A.H. Rasheed for the Appellant
M. Raza for the Respondent

Date of Hearing: 9th November, 1981
Delivery of Judgment: 27 NOV 1981

JUDGMENT OF THE COURT

Gould V.P.,

The appellant was convicted before the Principal Magistrate's Court at Honiara of the offences of conversion contrary to section 271(c)(i) of the Penal Code (Cap.5 - Revised Laws 1969) and of embezzlement contrary to section 266(b)(ii) of the same Code. The conversion charge related to the sum of $255.00 fraudulently converted to his own use and that of embezzlement to the sum of $124.00 representing money paid into the Magistrate's Court, Tulagi, by way of fines. Sentences of six months' and fifteen months' imprisonment respectively were imposed by the Magistrate on those charges, to run consecutively.

The appellant appealed to the High Court of the Solomon Islands against convictions and sentences, but his counsel did not support the appeal against conviction on the embezzlement charge (Count 2). The High Court dismissed the appeal against conviction on Count 1 (conversion) also, but reduced the sentence of fifteen months' imprisonment on the embezzlement charge to one of twelve months' imprisonment, while maintaining the order that the sentences run consecutively.

The appellant has now brought the present appeal to this Court against his conviction on the conversion count (Count 1) and against his sentences. Counsel at the hearing conveyed to the Court an intimation that his client wished to re-establish an appeal to this Court against his embezzlement conviction. That appeal having been withdrawn in the High Court by counsel we were unable to accede to the request.

All we propose to say concerning the appeals before us is that we find them to be entirely without merit. The appeal against conviction hinged entirely upon questions of fact and evidence, all of which was fully considered in the Magistrate's Court and treated again to scrutiny in the High Court. The question of sentence was considered carefully by both Courts. The magistrate noted (inter alia) that the sum of $255, the subject of the conversion charge, had been repaid by the appellant. The High Court, which gave the whole subject particularly detailed scrutiny, reduced the sentence on the embezzlement charge from 15 months to 12 months, on the ground that the fact that the appellant had spent a particularly long period awaiting trial might have been overlooked.

In dealing with questions of sentence in cases from territories outside Fiji this Court has always

acted upon the principle that the conditions, habits and way of life of the people in those territories are much better known to the local judiciary than they can ever be to the judges of this Court. The local judiciary is therefore in a much better position to decide what is an appropriate sentence in any particular case, unless a palpable error has been made or some well established principle neglected. In the present case the only factor that has given us pause for a moment is the fact that the sentences were imposed consecutively. Yet the two offences, similar though they were in kind, were quite separate, and the learned Chief Justice, dealing with the matter in the High Court, said that the sentences were not in themselves or in the totality wrong in principle.

For the reasons we have expressed, the appeals, both against conviction and sentence are dismissed.

In approaching this matter we have assumed, in favour of the appellant, that an appeal by him to this Court (after an appeal from the Magistrate's Court to the High Court) against conviction is not restricted to questions of law, and that in the like circumstances an appeal against severity of sentence is likewise available.

It is our present view that that is the position in law, though we have not had the benefit of any helpful argument from counsel, and of course the dismissal of the appeals remains unaffected whether our view is correct or not.

We mention that matter because at the outset of the appeal counsel both for the appellant and the respondent expressed themselves of being of the view that a second appeal against conviction did not lie except on questions of law and that no second appeal lay against severity of sentence.

Counsel based themselves upon section 22(1) of the Court of Appeal Act (Cap.12 - Ed. 1978 - Laws of Fiji) which provides for appeals to this Court from decisions of the Supreme Court sitting in appellate jurisdiction "on any ground of appeal which involves a question of law only (not including severity of sentence)". That, with respect, is entirely Fiji law and did not apply to an appeal from the Solomon Islands. That is covered by section 10(1) of the same Act, which reads :

> "10(1) With respect to appeals from the Courts of other territories, the law to be applied shall be such as shall for the time being be prescribed by or under the enactments in that behalf; and the jurisdiction, powers and authorities of the Court of Appeal with respect to such appeals shall be subject to the provisions of such enactments."

The present jurisdiction and powers of this Court under "the enactments in that behalf" on an appeal from the Solomons is a question of some complexity. We discussed one aspect of the matter in Reginam v. Peter Ome (Criminal Appeals Nos. 19 & 21 of 1980), and here, as there we make our point of commencement the Western Pacific (Courts) Order in Council, 1961. Section 19 of that Order provided for appeals to lie from judgments of the High Court of the Western Pacific, whether in the exercise of original or appellate jurisdiction, to this Court, in any civil or criminal cause or matter, in accordance with rules of court made under the Order. The then rules of court were the Court of Appeal Rules (No.2) 1956, which provided, by rule 34, that a person convicted on a trial might appeal to the Court of Appeal against his conviction and his sentence. The appeal against conviction could be on grounds of law alone, fact alone or mixed fact and law, or any other ground which the Court of Appeal considered sufficient.

There was no specific provision in the rules for appeals from the appellate jurisdiction. The rules in question were revoked by the Court of Appeal Rules, 1973, made under the 1961 Order. These rules in brief provided procedurally for appeals to this Court from the High Court in the exercise of its civil jurisdiction, its criminal jurisdiction and its appellate jurisdiction - divided again into civil and criminal. In no case did the rules purport to place any limitation upon the grounds which could be relied upon in the appeal.

The next enactment was the Solomon Islands (Courts) Order, 1975. It amended the Constitution by providing for a High Court for the Solomon Islands. By section 15(1) the Western Pacific (Courts) Order, 1961, was revoked so far as the Solomon Islands were concerned. A new provision concerning appeals was inserted in the Constitution as paragraph 65L in similar terms to section 19 of that Order. The "rules of court" to which reference is made are those, power to make which is conferred by paragraph 65I of the new Constitution, but as none have been made we construe the reference as being to the 1973 Rules, by virtue of the "existing laws" provision in section 7 of the Order. Section 4 of the Order shows that the Court of Appeal is this Court. The position regarding appeals therefore remained unaltered, including the absence of any limitation to the grounds of second appeals.

We proceed to the Solomon Islands Independence Order, 1978. By sections 85 to 89 of the Constitution provision is made for the establishment of a Court of Appeal. An Ordinance for this purpose was assented to on the 8th May, 1978; it is called the Court of Appeal Ordinance, 1978, and is expressed to come into operation on such date as the Chief Justice may, by notice in the Gazette, appoint. The new court is to be called

"the Solomon Islands Court of Appeal". The Ordinance provides for the various appeals which may be brought, in very similar terms to those of the Fiji Court of Appeal Act which we have mentioned above, in relation to Fiji appeals. In particular, section 21(1) limits appellants in criminal appeals from decisions of the High Court in appellate jurisdiction, to grounds involving questions of law only (not including severity of sentence).

It is quite clear that this Court has no jurisdiction under that Ordinance, even if it had been brought into effect: we have not been advised that it has. By virtue of section 12 of the Solomon Islands Independence Order, 1978, sections 85 to 89 of the new Constitution (providing for a Court of Appeal) do not come into operation until such date as the Governor-General may by order prescribe. We have not been advised that any such order has been made.

For the present jurisdiction of this Court we can only look to the meagre provision contained in section 12(4) of the 1978 Order to which we have referred :

> "12(4) Notwithstanding the provisions of this section, until such time as the Court of Appeal is established under section 85 of the Constitution, appeals from the High Court shall lie to the Court of Appeal of Fiji or such other court as Parliament may prescribe."

The future jurisdiction of the intended Solomon Islands Court of Appeal being irrelevant, we read this as preserving our jurisdiction as it was at the date of the Order, calling in aid once again the "existing laws" provisions to keep in force the Court of Appeal Rules, 1973.

We have concluded therefore that this Court retains jurisdiction to entertain second appeals from the Solomon Islands and that there is no provision restricting those appeals to questions of law or excluding severity of sentence. As we have indicated, this opinion has been arrived at without benefit of informed argument, and whether correct or not does not affect the outcome of the appeal.

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Vice President

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Judge of Appeal

27 NOV 1981

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Judge of Appeal