

53

IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 93 of 1985

Between: SEMESA ROKODUGUNI

Appellant

- and -

R E G I N A M

Respondent

Dr. J. Cameron for the Appellant
Mr. B. Singh for the Respondent

Date of Hearing: 18th September, 1987

Delivery of Judgment: 25th September, 1987

JUDGMENT OF THE COURT

Speight, V.P.

The above named was convicted in the Magistrates Court on eleven charges of shop breaking, burglary and the like on the 1st April, 1985.

He was sentenced by the presiding magistrate to twelve months imprisonment on each of eight of such convictions; to six months imprisonment on two of them; and to four months imprisonment on the remaining one. These sentences were all expressed to be cumulative so that in total there was imprisonment for nine years and four months.

He appealed to the Supreme Court against severity of sentence and on 9th August 1985 his appeal was dismissed. The learned appeal Judge examined the circumstances of the cases, and the appellants criminal history, and he discussed the principles to be observed in deciding between longer concurrent and shorter cumulative sentences, and he obviously had the well-known judicial dicta concerning "totality" in mind.

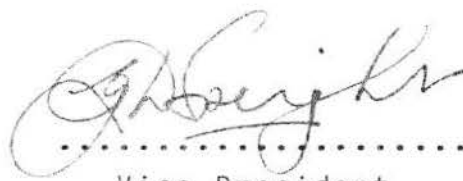
A further appeal has been lodged to this court. Dr. J. Cameron has been good enough to appear for the appellant. He conceded at once that he faced a grave jurisdictional problem in view of the provisions of section 22 of the Court of Appeal Act, Cap. 12 which limits second appeals to questions of law only, and expressly excludes appeals against severity of sentence.

This court has previously considered a sentence appeal in such circumstances but only on the ground that the period was in excess of the original jurisdiction conferred on a magistrate, and hence on appeal to the Supreme Court. That was clearly a point of law.

Dr. Cameron has striven to bring the sentencing magistrate's decision to cumulate in this instance within that category but in our view is unable to do so. Whether to follow the concurrent or cumulative path is a discretion reposed in a magistrate, albeit there are some guiding principles.

What was done here was within jurisdiction so that there is no point of law which can bring the case within section 22.

The appeal is dismissed.



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Vice-President



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Judge of Appeal



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Judge of Appeal