

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

CRIMINAL APPEAL NO. 57 OF 1985

Between: AJAY SINGH s/o Ram Lal Singh Appellant

and

R E G I N A M Respondent

Mr Sohan Singh for the Appellant

Ms Nazhat Shameem for the Respondent

Date of Hearing: 15th September 1987

Delivery of Judgment: 25th September 1987

JUDGMENT OF THE COURT

MISHRA, J.A.

The appellant was, on 6th June 1985, convicted of larceny by the Supreme Court and sentenced to one year's imprisonment.

It was a short trial and the facts of the case were simple. The appellant was employed by Martin Motors Limited as a car salesman and, in that capacity, he arranged to sell a car to one Vinesh Prasad, part of the purchase price was to be paid on delivery and the rest secured by a bill of sale. In addition to the cash deposit he obtained from Vinesh Prasad a further sum of \$100 in cash to cover registration and third party insurance. This sum was never received by Martin Motors who included the cost of those two items in the sum secured by the bill of sale.

The appellant admitted receiving \$100 but claimed that the money was for anti-rust treatment of the car, a facility not available at Martin Motors. The money, he said, was still with him when the police started their investigation.

The three assessors returned the unanimous opinion of guilty.

The appellant appeals against conviction as well as sentence.

He has put forward 8 grounds of appeal, several of them overlapping, which may be summarised as follows:-

- (i) that, this being a no-election minor charge, the learned judge erred in not remitting it back to the Magistrate's Court for trial;
- (ii) that the learned judge erred in advising the prosecution to reconsider the charge and permitting them to file a fresh information substituting larceny for fraudulent conversion;
- (iii) that the learned judge erred in permitting the prosecution to re-examine one of their witnesses at the end of the cross-examination; and
- (iv) that the learned judge erred in reading to the assessors only parts of the statement made by the appellant to the police.

We found no merit in any of these grounds and did not call upon Counsel for the respondent to reply. The learned judge was, in our view, correct in dealing with the trial in the manner he did and the allegations, most of which relate to procedure, cannot be regarded as having in any way vitiated the proceedings.

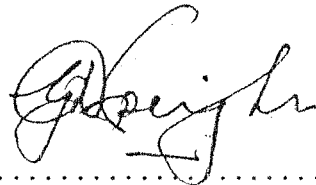
The appeal against conviction is dismissed.

The main thrust of the appeal, however, is against the sentence.

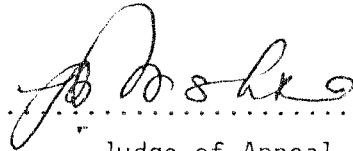
The appellant was, on 28th June 1985, granted bail pending appeal. In the normal course of things this appeal would have been dealt with in November 1985 or, at the latest, in March 1986 but, for some reason, not arising out of any default on the part of the

appellant, there was considerable delay in the registry in getting the record ready. More than two years have now passed and the appellant has, in the meantime, kept out of trouble and secured steady employment. It will not, in our view, be in the best interest of justice to deprive him of all that and return him to prison to serve the remainder of his sentence for a comparatively minor offence.

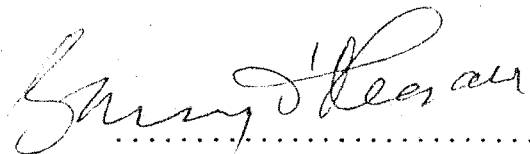
The sentence of imprisonment is, therefore, set aside and in its place is substituted a fine of \$250, in default 4 months' imprisonment. He will have four weeks to pay the fine.



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Vice-President



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Judge of Appeal



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Judge of Appeal