IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. AAU0009 OF 1995S
(High Court Criminal Case No. 31 of 1992 and
High Court Criminal Case No. HAC0012/94)

BETWEEN:

APENISA RALULU Appellant

-and-

THE STATE Respondent

Appellant in Person
Ms L. Tabuya for the Respondent

Date and Place of Hearing : 8 May 1997, Suva
Date of Decision : 16 May 1997

JUDGMENT OF THE COURT

The Appellant was initially charged with two counts of Robbery with Violence before Kepa J. in High Court Criminal Case No. 31 of 1992. The robberies were alleged to have been committed on 22 October 1991. He pleaded not guilty to both counts. All 3 assessors expressed the opinion that the Appellant was not guilty on the first count but guilty on the second count. The trial Judge

accepted the opinion of the assessors and so acquitted the Appellant on the first count and convicted him on the second count. After taking into account the period the Appellant had spent in jail the trial Judge sentenced him to 4 years' imprisonment on 9 March 1994. When sentencing the Appellant the trial Judge made the following observations:-

> *"In this case it is clear to me that accused with others used cane-knives to threaten the victim in this offence inorder to carry out their intention of robbing him. There is very little one can say by way of mitigation for the accused.*
>
> *Offences of robbery with violence are becoming more prevalent now. It is an offence which ought to be discouraged by our courts in imposing heavy sentences to meet the violence used, when a person is convicted of such offence.*
>
> *I have noted your previous convictions, which do not speak too well for you. They date back to 1980. Unless you learn from your errors in the past and your error now, the future must look very gloomy for you and your family.*
>
> *A deterrent sentence is clearly called for."*

The Second Case

The Appellant was then arraigned before the same Judge on 11 October 1994 with 2 further counts of Robbery with Violence in Criminal Case No. HAC0012 of 1994. The offences were alleged to have been committed on 4 July 1992. He pleaded not guilty to both counts. The case was then adjourned.

When the Appellant appeared before the Court again on 6 December 1994 the first count was slightly amended. The Appellant then pleaded guilty to both counts. The change of heart does not appear to be in anyway linked with the minor amendment made to the first count.

The following facts as outlined by Mr. MacNaughton of the D.P.P's Office were admitted by the Appellant:-

> *"At 7.30 p.m. Lalita Deo and Raj Mati were maning (sic) the till at Supermarket at Naulu when Accd with others and threatening them with crowbars and knives and stole $1500 cash and cheque of $130 from Lalita Deo where he said Lalita took flight out of fear; Accd also stole $2000 from Raj Mati by threatening her with knife and pinch bar. Both complainants took flight out of fear. This incidents occured on 4/7/92."*

The Appellant was therefore convicted as charged. He also admitted 17 previous convictions. We think it is both fair and relevant to record here what the Appellant said in mitigation:-

> *"I ask for leniency. I'm sory for what I've done. I blame no one else but me. I have admitted my guilt in open Court today. I've told this Court the whole truth. I ask the Court to take into account my plea of guilty. I am sorry for the victims of my offence. I ask Court to forgive me for what I've done. I have now realised how selfish and wrong I have been. I ask your forgiveness my Lord. I request your leniency my Lord."*

The learned Judge then sentenced the Appellant to 4 years' imprisonment on each count to run concurrently with each other but consecutively to any sentence that the Appellant was then already serving.

In sentencing the Appellant in the second case Kepa J. observed that out of the 17 convictions that the Appellant had, 3 were related to Robbery with Violence. He took into account the Appellant's plea in mitigation and the fact that he had pleaded guilty. However he observed that the offences of Robbery with Violence were very prevalent and therefore a custodial sentence was warranted.

On 26 May 1995 the Appellant filed an application for leave to appeal out of time. In this application he referred to both Criminal Cases i.e. No. 31 of 1992 and No. HAC0012 of 1994. On instruction from the President, the Registrar advised the Applicant to send in his grounds of appeal upon receipt of which the President would consider the question of giving leave to appeal out of time.

On 19 April 1996 the Appellant filed his 'Petition' of Appeal prepared by the Prison Department. This 'Petition' made reference to Criminal Case No. 3 of 1992 only; 3 was obviously a typographical error for 31. The Appellant's letter accompanying the 'Petition' was headed- "Conviction and Sentence out of Time". However in the body of his letter only grounds for appeal against conviction were given. Nevertheless on 23 May 1996 the President granted leave to appeal out of time. However when the Appellant appeared in person on the Call-Over Day on 21 April 1997, he told the President that he wished to appeal against sentences only as he had committed all the offences with which he had been charged in the two cases. He also submitted a number of letters and asked that they be taken into account when his appeal came up for hearing. When his appeal came up for hearing on 8 May 1997 he confirmed that he wished to appeal against sentences only in both cases.. We, therefore, proceeded to deal with the appeal as if it were lodged against sentence only.

The Appellant's Submissions

The Appellant asked for leniency and indicated a strong desire to rehabilitate himself. He expressed regrets for his offences and the harm he had done to his victims. He also expressed the desire to be reunited with his wife and his 6-year old daughter. He produced a copy of a letter dated 3 July 1996

addressed to the Resident Magistrate, Suva by the Roko Tui Macuata. This letter indicates that Macuata Provincial Council has in hand a program of rehabilitation for people like the Appellant who come from the Macuata Province.

The 5 letters that the Appellant had previously submitted for our consideration have come from various sources including one from the Turaga-ni-Koro of the village to which the Appellant belongs, and another from his father. In fact two of them are copies of letters addressed to different authorities in 1996. The thrust of these letters can be summarised as follows -

(i) that the Appellant is amenable to rehabilitation, especially if he is released on compulsory supervision order to live and do farming in his village;

(ii) that he has been a good member of his church and has regularly attended Prison Fellowship Bible studies;

(iii) that it will assist his rehabilitation if he were to be transferred to Labasa to serve his sentence there. (We note the Appellant was transferred to Labasa in October 1996.)

The State's Case

Ms Tabuya on behalf of the State submitted that there is no merit in this appeal and that the sentences passed were within the normal tariff. She cited 2 English cases from Sweet & Maxwell's Encyclopedia of Current Sentencing Practice and one local judgment in support of her contention. These were -

(i) Attorney General's Reference (Nos. 8 & 9 of 1990) (R. v. Singleton & Hodgkins).

(ii) Attorney General's Reference (Nos. 10 & 11 of 1990) (R. v. Ryan and Walsh).

(iii) Hem Bahadur & Anor v. The State - Fiji High Court Criminal Appeal No. 0057 of 1996.

She emphasised the seriousness of armed robberies particularly in the context of their prevalence in Fiji.

The Court's Approach

The effective sentence that the Appellant was ordered to serve is 8 years in respect of the 3 counts on which he was convicted - one in the first case and two in the second case.

Normally in the absence of any exceptional circumstances an appeal against sentence would succeed only where the sentence was unlawful, wrong in principle or manifestly excessive. There is no question of any sentence being unlawful in the present appeal.

We shall, therefore, first consider whether the sentences passed on the Appellant were wrong in principle, and then whether viewed individually or in their totality, they were manifestly excessive.

Nature of Sentence

This Court has time and again emphasised that armed offences especially armed robbery involving violence or threat of violence must be viewed with

utmost gravity. This is particularly so if the offence involved is a prevalent one as was the case in this appeal. We, therefore, have no hesitation in holding that the trial Judge did not err in principle in imposing an immediate custodial sentence in both cases. In fact he was more than justified in doing so.

Quantum of Sentence

As regards the quantum of sentence we note that in the first case the Appellant was convicted under Section 293(1)(b) of the Penal Code Cap.17 involving threat of violence with a cane knife. In the second case he was convicted on both counts under subsection (1)(a) of Section 293 for robbery, being armed with offensive weapon namely a cane knife and a pinch bar. The maximum sentence prescribed under both subsections of Section 293 of the Penal Code is life imprisonment with or without corporal punishment. So the sentence of 4 years imposed on the second count in the first case cannot in any way be characterised manifestly excessive bearing in mind the use of a cane knife. We in fact agree with the observations made by Kepa J. when sentencing the Appellant in the first case. Similarly the 2 sentences of 4 years each passed in the second case cannot in any way be considered to be manifestly excessive especially since they were made concurrent to each other. An aggregate of 8 years' imprisonment for 3 acts of armed robberies on 3 different persons on 2 different occasions does not offend against the principle of totality of sentence. A further aggravating feature was that the robberies were obviously planned and were committed by the Appellant in company with others.

Whilst we feel that the Appellant is genuinely remorseful about his misdeeds and that he wants to turn a new leaf by putting his criminal past behind him we will nevertheless be not justified in interfering with the punishment imposed by the High Court. There are in fact no exceptional circumstances, mitigating or otherwise, to enable us to do so although we are mindful that one of the objectives

of an enlightened penal policy is to encourage self-help and community involvement in rehabilitation of prisoners. The Appellant's desire to serve the balance of his prison term in Labasa has already been met by the Prison Authorities.

As for release on Compulsory Supervision Order (C.S.O.) whilst serving sentence, this is a matter entirely within the jurisdiction of the Minister responsible for Prisons. Under Section 65 of the Prisons Act Cap. 86 the Minister enjoys a wide discretion to release a prisoner under C.S.O. for such period as he thinks fit.

The Appellant informed us that his application to be released under C.S.O. is awaiting decision pending the outcome of this appeal. If this is so then no doubt the Authorities will now give due consideration to his application in the light of the wide support he appears to enjoy from his Provincial Authorities.

Decision

In the outcome this appeal against sentence in both cases, i.e. High Court Criminal Case No. 31 of 1992 and High Court Criminal Case No. HAC0012/94, is dismissed.

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Sir Moti Tikaram
President, Fiji Court of Appeal

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Sir Maurice Casey
Judge of Appeal

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Mr Justice Handley
Judge of Appeal