

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 34 of 2011
(High Court HAC 116 of 2007)

BETWEEN : **SULIASI SOROVAKATINI** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Chandra JA**

Counsel : **Appellant in Person**
Mr M. Korovou for the Respondent

Date of Hearing : **23 May 2013**

Date of Ruling : **29 July 2013**

RULING

1. The Appellant was charged on four counts of official corruption contrary to section 106(a) of the Penal Code along with another (2nd accused) who was charged on four counts on four counts of Official Corruption contrary to section 106(b) of the Penal Code.
2. The Appellant was found guilty after a trial before Assessors on three counts while the 2nd accused was also found guilty of three counts on which he was charged.
3. The Appellant was sentenced to 4, 4 and 5 years for the three counts on which he was found guilty and it was ordered that the sentences would run concurrently with a non-parole period of 4 years.

4. The Appellant in his notice of appeal filed on 13 April 2011 sought leave to appeal on the following grounds:

1. That the learned trial judge erred in law and in fact in failing to adequately direct the defence case to the assessors.
2. That the learned trial judge erred in law and in fact in failing to direct the assessors adequately on the burden of proof.
3. That the learned trial judge erred in law and in fact in misdirecting the assessors that the Appellant “purchased and paid farming equipment for the value of \$225,092.04” when the evidence was to the contrary.
4. That the learned trial judge erred in law and in fact in finding that the acts or omissions by Suliasi Sorovakatini in the discharge of his public office in relation to the cheque for \$225,092.04 were the quid pro quo for the benefits alleged to have been given to him.
5. That the sentence imposed by the learned trial judge is manifestly harsh and excessive.

5. The following further grounds of appeal were urged in the submissions filed on 3 May 2013 by the Appellant:

6. That the learned judge failed to contract general observations as to the principle of sentencing particularly in relation to the need of sentencing court to ensure that where immediate custodial sentence is called for it should be short as possible consistent only with the duty of the Court to protect the public and deter the criminal.
7. That the learned sentencing judge failed to balance the principle of deterrence and rehabilitation when sentencing the applicant.

8. That the learned sentencing judge erred in law in not considering the four classic principles of sentencing.

6. The charges against the Appellant have been based on corruptly receiving benefits on account of acts done or afterwards to be done by him in the discharge of the duties of his office while being employed in public service. Goods had been sold and delivered by Suncourt (Wholesalers) Limited at the request of the State acting through the Ministry of Agriculture Fisheries and Forests. Certain benefits had been provided to and accepted by the Appellant who was alleged to have authorized the payment to Suncourt (Wholesalers) Limited. The Appellant was the Principal Accounts Officer of the said Ministry at the relevant time.

7. The first two grounds of appeal against conviction are based on the summing up of the learned trial Judge to the Assessors. The submission of the Appellant is that the learned trial Judge had failed to direct the Assessors adequately on the defence case and burden of proof. The learned trial Judge had in his summing up stated that the Appellant had accepted the fact that he received certain benefits from Suncourt Limited and therefore the aspect of receiving benefits had been proved and the question was whether they were received corruptly. That question was left to the Assessors to decide after going into the details regarding the purchases, the payment and the nature of the benefits.

8. The learned trial Judge in his summing up stated that the Appellant had purchased and paid for the farming equipment and left it to the Assessors to consider whether it was an ordinary transaction, in the course of normal transactions between MFF and Suncourt or a different transaction. The position of the defence was that it was in the nature of a normal transaction.

9. The position taken up by the Appellant in his third ground of appeal against conviction is that the evidence was contrary to the position that the Appellant had purchased and paid for the farming equipment. In view of this, taking the summing up of the learned trial Judge as a whole it would be arguable as to whether the summing up was adequate in the circumstances. That would be a matter which could be considered by the full court and therefore leave can be granted on the basis that it is an arguable matter.
10. On the question whether the cheque given to Suncourt was the quid pro quo for the benefits alleged to have been given to the Appellant which is the fourth ground of appeal against conviction, which the learned trial Judge had in his summing up dealt with. It would be arguable as to whether there was a misdirection in that regard in the summing up of the learned trial judge which the full court can consider and leave can be granted on that ground.
11. As regards the grounds of appeal against sentence, they are based on the general principles of sentencing. In the present case, the learned trial Judge had to consider the position of the Appellant as one having committed offences of official corruption which are considered as serious offences. In such an instance the Court has to consider such matters seriously. Once detected, tried and proved the need to impose a punitive deterrent sentence to others, becomes crucial. **Robert Yabara v The State** [1984] PNGLR 378.
12. The Court of Appeal set out the following principles regarding sentencing in **Kim Nam Bae v The State** [1999 FJCA 21; AAU 0015 of 1998 :

“It is well established law that before this court can disturb the sentence, the appellant must demonstrate that the Court below fell into error in exercising its sentencing discretion. If the trial judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some of the relevant considerations, then the appellate court may impose a different sentence.”

“An appropriate sentence in any case is fixed by having regard to a variety of completing considerations. In order to arrive at the appropriate penalty for any case, the courts must have regard to sentences imposed by the High Court and the Court of Appeal for offences of the type in question to determine the appropriate range of sentence.”

13. The learned trial Judge has followed the principles appropriately in sentencing the Appellant and considered the tariff for such offences and arrived at a starting point of three years for the first two counts and four years for the third count on which he was convicted which were within the tariff. Thereafter he considered the aggravating factors and mitigating factors and arrived at the sentence of 4 years for the first two counts and 5 years for the third count, the sentences to run concurrently and with a non-parole period of 4 years.
14. The other accused who was convicted and sentenced in this case was not an officer in public service and therefore different considerations were applied when sentencing him. Such differences cannot be considered to show disparity as the learned trial Judge had to consider their sentences differently taking into account the positions they held.
15. The Appellant was not a first offender although the learned trial judge had not taken the previous conviction of the Appellant into consideration as an aggravating factor when sentencing him.
16. The learned trial Judge had considered the relevant principles and tariff in sentencing the Appellant and therefore the grounds urged by the Appellant against his sentence have no merit.

Orders of Court

1. The application for leave to appeal against conviction is allowed.
2. The application for leave to appeal against sentence is refused.
3. The appeal to be listed for hearing before the Full Court as early as possible.

Suresh Chandra
Resident Justice of Appeal