

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO.: HAA 03 OF 2014

BETWEEN: SURESH LAL

Appellant

AND: STATE

Respondent

Counsels: Appellant in person
Mr. F. Lacanivalu for the Respondent

Date of Judgment: 05 June 2014

JUDGMENT

1. The appellant was charged before the Sigatoka Magistrate Court on one count of Larceny contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.
2. According to summary of facts, appellant with others between 14th and 15th day of January 2010 at Kavoca, Sigatoka in the Western Division stole 13 goats valued at \$ 1,200.00 the property of Dor Sami Naicker. On the 14th day of January 2010 at about 4.00 p.m. Dor Sami Naicker noticed that all his goats grazing on his farm. When he checked again the next afternoon, he only saw five goats grazing and the rest missing. He searched the area but to no avail. In his own enquiry around the nearby settlement he was advised that a person had being arrested at the Valelevu Police station for failing to pay the cost of 13 goats to an unknown iTaukei man and those goats were brought from Yalava, Sigatoka. Dor Sami Naicker then lodged a complaint at the Sigatoka Police station. The total value of the 13 goats estimated at \$1,200.00. When appellant was interviewed under caution he admitted the facts of the case and was formally charged.
3. Appellant pleaded guilty to the charge, admitted the summary of facts and were sentenced on 3.7.2013 for a period of 22 months imprisonment consecutive to serving sentence.

4. The learned Magistrate had selected a starting point of 2 years. He had added 8 months for the aggravating factors including stealing animals from farmer who rely on them as his main source of livelihood.
5. Ten months were deducted for the guilty plea and mitigation arriving at a sentence of 22 months.
6. Appellants had filed this appeal against the sentence on 6.12.2003 after leave was granted by this court to file appeal out of time in HAM 400 of 2013 on 5.12.2013.
7. The grounds of appeal are as follows:
 - (i) The learned Magistrate had failed to consider Section 22 (1) of the Sentencing and Penalties Decree and to order a concurrent sentence
 - (ii) The learned Magistrate failed to enforce the sentence for the date of sentence.
8. Both parties made oral submissions.
9. State in their submissions has stated that the appellant should be considered a habitual offender considering his previous record. The appellant has 25 previous convictions. Only three of them were in operation at the time of sentence. Two of the offences in 2003 are obtaining goods by false pretence. The other in 2004 is Larceny by trick. In order to declare a person as a habitual offender he should have committed offences, which falls into one of the categories given in Section 10 of the Sentencing and Penalties Decree. The offences committed by the appellant do not fall within those categories.
10. The Section 22 (1) of the Sentencing and Penalties Decree was given a wide interpretation by the Fiji Court of Appeal in Vukitoga v State[2013] FJCA 19;AAU 0049.2008 (13 March 2013)

“[22] The situation that presents itself to the Court therefore, and a proposition advanced by counsel for the appellant is this: there being no guidance from authorities of higher courts on concurrent or consecutive sentencing, we are left only with the legislation (Sentencing and Penalties Decree) which states that subsequent sentences must be served concurrently with existing sentences.

[23]Guidance for this situation can still be gleaned from the earlier decision of the Supreme Court in Joji Waqasaqa v State [2006] FJHC 6 CAV 0009U.2005S (8 June 2006) by analogy. If the Court said (and it did) that where the “default” position was

consecutive, then a Court would have to give “reasoned justification” to depart from that position in making sentences concurrent, then a Court must now when the “default” position is concurrency make a reasoned justification to depart from the “default” position in making sentences consecutive or partly consecutive.”

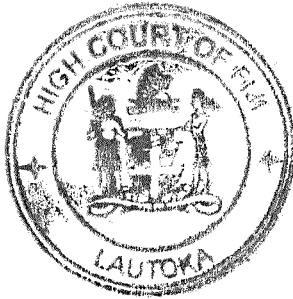
11. The learned Magistrate had not given any reasons for making the sentence consecutive.

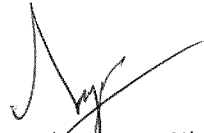
There is no reasoned justification for making the sentence consecutive.

12. This background warrants this court to exercise its powers in terms of Section 256 (2) (a) of the Criminal Procedure Decree to vary the operation of the sentence ordered by the learned Magistrate. Thus sentence in this case is made concurrent to the 15 months sentence in Tauva Magistrate Court Case No. 43/12 dated 1st July 2013 and 9 months sentence in Suva Magistrate Court Case No. HAA 020/13 dated 21.5.2013.

13. The appellant is to serve 22 months from the date of last sentence that is 3.7.2013. He is not eligible for parole till 3.11.2014 that is till completion of 16 months of the last sentence.

14. Appeal is allowed. Operation of the sentence is varied.




Sudharshana De Silva
JUDGE

AT LAUTOKA
05TH June 2014

Solicitors: Appellant in Person
Office of the Director of Public Prosecution for the Respondent