

## SOWANI TOLANIGADI

v.

## REGINAM

[SUPREME COURT, 1970 (Hammett C.J.), 2nd October, 6th November]

## Appellate Jurisdiction

*Criminal law—practice and procedure—appeals by same accused against sentences imposed in respect of separate charges and separate offences—separate petitions of appeal necessary—no provision for consolidation—Penal Code (Cap. 11) ss. 277, 303. Criminal law—appeal—practice and procedure—separate petitions of appeal from Magistrate's Court required in respect of each separate offence.*

Where an accused person has been convicted in the Magistrate's Court of two separate offences upon separate charges and desires to appeal to the Supreme Court against the sentence imposed on each, he must file a separate petition of appeal in each case. While the Supreme Court may, for convenience, be prepared to hear both appeals at the same time, there is no provision in the Codes whereby such cases or appeals can be consolidated.

Appeal against a sentence in the Magistrate's Court; reported only on a question of practice and procedure.

*V. J. Parmanandam* for the appellant.

*D. I. Jones* for the respondent.

HAMMETT C.J.: [6th November, 1970]—

The appellant was charged in the Magistrate's Court at Nausori in Criminal Case No. 520 of 1970 on 21st July, 1970, with the offence of Larceny from the Person on 14th July, 1970, contrary to Section 303 of the Penal Code. The record shows that on 21st July, 1970, when he appeared in Court the charge was read and explained. He elected summary trial and pleaded guilty to the charge.

The facts were that on 14th July, 1970, the accused followed the complainant Ana Makarina, with whom he had been previously living, on her way back from work, despite her objections and despite being warned by the Police. He later grabbed her by her dress and forced her into a taxi and snatched her purse which contained her salary cheque and some cash and drove off with it. The accused did not seriously dispute the facts but said that later the complainant got her cheque back.

He was convicted and sentenced to 1 year's imprisonment. The learned trial Magistrate endorsed the bottom of the record—" See CR. 523/70 ".

In Nausori Criminal Case No. 523 of 1970 the appellant was dealt with on the same day by the same Court on another charge against him which was then before the Court. The charge in that case was Assault Occasioning Actual Bodily Harm contrary to P.C. Section 277 on 17th July, 1970, to the same complainant Ana Makarina.

**A** In that case he also pleaded guilty and on conviction he was sentenced to 1 year's imprisonment, which was ordered to run concurrently with the sentence imposed in Criminal Case No. 520 of 1970.

**B** The appellant filed a single petition of appeal dated 30th July, 1970, signed by himself, against the sentence imposed in both cases. This is an irregular practice which is not uncommon. It is, however, quite understandable where an unrepresented appellant files his petition of appeal without legal advice. It is irregular because an appellant should file a separate petition of appeal in each separate case in respect of which he wishes to appeal. Whilst the Court hearing the appeal may, for convenience, be prepared to hear such appeals, where they are against sentence only, at the same time, they are in fact separate cases and separate appeals and a separate decision is required in each case. There is no formal provision in our Codes whereby such cases or appeals can be consolidated.

**C** The proper practice and the practice that is normally followed by the Supreme Court Registry in such circumstances, is to return the petition of appeal to the appellant and to request him to make out, sign and return a separate petition of appeal in respect of each separate case in which he wishes to appeal. This procedure should be followed in future by the Registry in all such cases.

**D** Unfortunately this procedure was not followed by the Registry in this case. As a result this appeal has come on for hearing before me with a petition of appeal that seeks to appeal against the sentences passed in two different and separate cases, namely Criminal Case No. 520 of 1970 and Criminal Case No. 523 of 1970, in one appeal.

The appellant has in fact, by Counsel, also filed a separate appeal in respect of Criminal Case No. 523 of 1970, namely Criminal Appeal No. 106 of 1970.

**E** Since there is a separate petition of appeal in respect of Criminal Case No. 523 of 1970, I shall disregard the references to that case in dealing with the petition of appeal in Criminal Case No. 520 of 1970.

**F** When this appeal came before me on 2nd October, 1970, Counsel appeared for the appellant and informed me that he had now filed joint grounds of appeal in Criminal Appeal No. 106 of 1970 against the sentences passed in Criminal Cases No. 520 of 1970 and No. 523 of 1970. In these circumstances, Counsel said he wished to abandon the appeal in this case and to proceed only with his "joint appeal" against both cases in Criminal Appeal No. 106 of 1970.

**G** Counsel for the Crown quite properly pointed out and submitted that the grounds of appeal in each case must be separate and must be related only to the charge in that case. He contends that if Counsel abandons his appeal in this case he cannot then at the hearing of his appeal against sentence in the later appeal rely upon any grounds of appeal raised in this case. This is clearly so. Counsel for the appellant nevertheless still indicated he wished to abandon his appeal in his case.

**H** It seems to me that Counsel for the appellant is making the same mistake in his later appeal as the appellant himself has done in this appeal, i.e. he has attempted by framing his petition of appeal so as to appeal against two separate cases to consolidate the cases for appeal purposes. This could not be done without the Court so ordering it to be done and as far as I am aware the Court has no power to do this. Certainly no authority has been cited to me showing that the Court may so order, and I have declined to do so.

I have come to the conclusion that in this appeal the Court can only deal with the grounds of appeal in respect of the appeal against the decision in Criminal Case No. 520 of 1970. Similarly, in Criminal Appeal No. 106 of 1970, the Court can only deal with the grounds of appeal in respect of the decision in Criminal Case No. 523 of 1970. I intend to deal with each appeal on this basis. **A**

What is to my mind essential, is that I should not allow the fundamental rights of the appellant to be adversely affected as a result of what I feel are misconceptions on matters of procedure. **B**

Before acceding to the application of Counsel for the appellant to abandon this appeal, which is in effect an application for leave to withdraw it, I have, therefore, given careful consideration to the essential character of the appellant's complaint. This is that the sentence of 12 months' imprisonment is harsh and excessive having regard to the circumstances of the case and the petitioner's past good record. **B**

The facts show that the appellant persisted in following the female complainant despite her protests and despite being warned by the Police. He then attacked her and forced her into a taxi. He then stole her purse which contained her salary cheque and a small amount of cash and himself drove off. **C**

This is quite outrageous conduct on the part of the accused on the highway. The learned trial Magistrate quite properly took a serious view of the case. Whilst I consider the sentence is undoubtedly a severe one for a first offence, I do not consider it is so severe as to warrant this Court interfering with it. **D**

In these circumstances I see no reason why the application by Counsel for the appellant to abandon or withdraw the appeal should not be granted, and I accede to it.

For these reasons I make a formal order dismissing the appeal.

*Appeal dismissed.* **E**