

THE DIRECTOR OF PUBLIC PROSECUTIONS

A

v.

ROBERT SIMPSON

[SUPREME COURT 1978 (Grant C J.), 18th October]

B

Appellate Jurisdiction

Criminal law—principles of sentencing—carrying excess passengers by sea—Marine Board Ordinance (Cap. 159) S. 48.

C

The respondent was convicted in the Magistrate's Court of carrying excess passengers on his vessel and was fined. In allowing the appeal the Court described the offence as both serious and prevalent and substantially increased the fine.

Cases referred to:

R. v. Hari Ram Lab. Cr. App. 9 of 1975 (unrep.)

R. v. Sunia Vosaki Rev. 1 of 1978 (unrep.)

D

Appeal against sentence imposed in the Magistrate's Court.

T. Fa for the appellant.

Respondent in person

GRANT C.J.:

E

On the 8th June 1978 at Tailevu Magistrates Court the respondent was convicted on his own plea of carrying excess passengers contrary to section 48 of the Marine Board Ordinance and was sentenced to a fine of \$78.

The Crown has appealed against sentence as being manifestly lenient having regard to the nature and circumstances of the offence.

F

I may say that the trial Magistrate is the first to concede that the sentence he imposed is inappropriate, arising from a mathematical miscalculation on his part which he has very properly drawn to the attention of this Court.

G

Section 48 of the Marine Board Ordinance provides as a penalty for carrying excess passengers on a vessel a fine not exceeding \$100 and an additional fine not exceeding \$40 for each excess passenger or, if the fare of any passenger exceeds \$40, double the amount of the fares of all excess passengers calculated at the highest rate of fare payable by any passenger on board, or to imprisonment for any period not exceeding six months, or to both such fine and imprisonment. It follows that when a fine is imposed, the trial Magistrate should indicate both the basic amount, and the additional amount that he is imposing in respect of each excess passenger, which was not done in this case.

H

The respondent is the master of a vessel which is licensed to carry 56 passengers by day, but on the 27th January 1978 at Natovi Landing, Tailevu the vessel was found to be carrying 94 passengers, being 38 in excess of the authorised number. As each

passenger paid a fare of \$14, the lives of all those on the vessel were put at risk for the sake of an illicit profit of \$532. A

This is a serious and prevalent offence and those who commit it can expect no leniency from the Courts. In the case of *R. v. Hari Ram* (Labasa Cr. App. No. 9 of 1975), where a master was convicted under the Penal Code of conveying for hire persons in an overloaded vessel, which sank and endangered the lives of 43 children who fortunately were rescued, this Court imposed a sentence of twelve months' imprisonment. In *R.v. Sunia Vosaki* (Review No. 1 of 1978), in which the offence committed and the facts were similar to those now before me, the master was fined \$40 and in addition \$15 for each excess passenger. B

However a fine of \$15 for each excess passenger in the present case would be inadequate, for as the excess passengers each paid a fare of \$14 it would amount to little more than the respondent refunding the illicit fares. C

The manifestly lenient sentence imposed by the trial Magistrate is set aside and in substitution therefor the respondent is fined \$50 and in addition \$25 for each excess passenger, making a total sum of \$1,000. In default of payment six months' imprisonment.

Appeal allowed; sentence varied.