

Appellate Jurisdiction
Criminal Appeal Nos. 13 and 14 of 1981

Between:

QORINIASI LAWE

and

REGINAM

Appellant in Person.

Mr. S. Chandra for the Respondent.

JUDGMENT

On 1st October 1980 the appellant stood trial in the Nausori Magistrate's Court on two sets of charges comprising seven and four counts respectively.

Appellant pleaded guilty to all the counts and on the first charge was sentenced as follows:-

First count	..	3 years' imprisonment
Counts 2 to 7	..	one year imprisonment on each count, all of which to run concurrently

On the second charge appellant was sentenced as follows:-

Count 1	..	2 years' imprisonment
Counts 2-4	..	one year imprisonment on each count, all of which to be served concurrently

The total effective sentence imposed on appellant was five years' imprisonment. Appellant has appealed against the sentences he received on the two sets of charges. These now comprise the subject matters of Criminal Appeal Nos. 13 and 14 of 1981.

The facts relating to offences in Criminal Appeal No. 13 of 1981 were as follows:-

Count 1 - On 22.12.79 accused went to Lalato & Company shop at Nausori and obtained a number of clothes and at the time of payment he told complainant that he works for Ministry of Finance. Complainant believed that accused is a person with money in Bank and parted with goods. Accused wrote National Bank of Fiji Cheque No. 49265 for \$86.61. On the following day Manager banked cheque, it bounced back. Accused had no account. Matter reported to Police.

Count 2 - Accused wrote a cheque for \$10.80 telling complainant at village at Naikawaqa that Bank was on strike and needed cash. Complainant believed him and parted with his money.

When he posted the cheque came back as accused had no account. He reported to Police.

Count 3 - On 24.12.79 accused went to Lalato and Company. Finding shop busy he obtained clothings to the value of \$42.40. He went to another staff of the Company, told her he worked for Ministry of Finance and asked her to accept the cheque for the goods - Cheque No. 49268 - parted with goods in good faith. Cheque bounced back. No account. Case reported to Police.

Count 4 - On 24.12.79 accused went to Tubalevu Village where he told one Anasa Naloma that he wanted to buy a pig. Upon agreement he persuaded the complainant to accept a cheque for \$25.00. He wrote a cheque No. 49272 for that amount. Complainant went to cash the cheque. Bank advised there was no money in the account. There was no account. He reported to Police.

Count 5 - On 24.12.79 still at Tubalevu accused went to one Alipate Salele and told him that he had run out of cash and he wanted to cash his cheque. Complainant believed him. Accused wrote a cheque No. 49273 for \$38.00 and complainant gave him cash for that amount. On 28.12.79 complainant came to Bank to cash the cheque. He was told accused had no account. He reported to Police.

Count 6 - On 27.12.79 accused came to Nausori and went to Dutt's Tailor shop, told owner that he works for Ministry of Finance and made believe the complainant that he works there. He made some purchases - clothings - and wrote Cheque No. 49270 for \$20. He went away with goods.

Count 7 - On 27.12.70 the accused returned to Dutt's Tailor Shop and bought goods to amount of \$75.80 and wrote a cheque No. 49269. He took the goods when cash handed. Both cheques (Counts 6 and 7) were returned. No account. He reported to police. News floated that accused had no account and yet he went on writing dud cheques. Police started investigation. Accused was found evading Police. He was located on 29.9.80 and questioned. Arrested and charged.

The facts relating to offences in Criminal Appeal No. 14 of 1981 were as follows:-

Count 1 - On 29.3.79 accused went to Woolworths Supermarket in Thomson Street in Suva with National Bank of Fiji cheque No. 002791 of \$50 and presented to the cashier for cashing - cashier refused. She told him to buy something. Accused bought clothing valued \$5.00 and gave the same cheque for \$50 and obtained \$45 change. Accused went away.

Count 2 - On 29.3.79 accused went to Woolworths Supermarket in Rodwell Road, Suva - bought goods worth \$11.47 and gave national Bank of Fiji cheque No. 002789 for \$50 and in return he was given \$38.53 change. The next day Manager of the shop went to the Bank with both cheques. Bank told the Manager that accused did not have any account with the Bank.

Count 3 - On 5.4.79 accused went to Woolworths Supermarket in Nausori, bought goods worth \$10.74. He presented a National Bank of Fiji cheque for \$50 - cheque No. 002798 and he obtained change amounting to \$39.36.

Count 4 - On 6.4.80 accused went to Woolworths Supermarket and bought goods worth \$11.74. He presented a National Bank of Fiji cheque No. 002799 for \$50. He was given \$38.26 change. The next day the Manager of the shop presented the cheques and was told accused had no account with the Bank.

Matter reported. Police investigated. On 1.10.80 accused was interviewed. He admitted offence and charged.

The appellant was 24 years of age at time of the offences. The facts show a series of frauds of which the method used was essentially the same in every case and the sums involved were relatively small.

The offences were perpetrated within a short period of time. The first lot of offences occurred between 29.3.79 and 6.4.79 and the second lot between 22.2.79 and 27.12.79.

The appellant explained his conduct as lapses arising from acute personal pressures at the time when he was unwell. He has a wife and a small child and his parents are both old. Appellant has a good command of English at which he is very fluent. He is also very intelligent as is clear from his speeches in mitigation in the lower Court as well as in this Court. He says he felt great remorse for what he had done and that he assured this Court that he would henceforth go straight and asked for the sentences in the lower Court to be reduced. Appellant has only one previous conviction of any gravity and this was for burglary in 1976 for which he was sentenced to nine months' imprisonment.

Crown Counsel conceded that the totality of sentences was harsh when considered in relation to the individual offences which were not by themselves the most serious of their kind.

I agree that the sentences on each count should bear a reasonable relationship to each particular offence and the overall sentence should be no more and no less than what was necessary having regard to all the circumstances of the offences. It seems to me that the sentence of five years' imprisonment was too long.

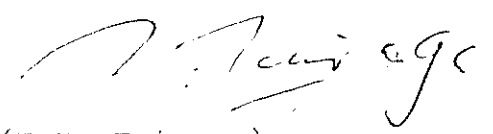
I would allow the appeal and set aside the sentences imposed in the Court below and substitute for them the following:-

Criminal Appeal No. 13 of 1981

First count	..	1 year imprisonment
Second count	..	1 year imprisonment (to be consecutive to first count)
Third count	..	1 year imprisonment (to be consecutive to second count)
Fourth to Seventh counts	..	1 year imprisonment on each count (to be concurrent with third count)

Criminal Appeal No. 14 of 1981

On each count appellant is sentenced to one year imprisonment to be served concurrently with sentences in Criminal Appeal No. 13 of 1981.



(T.U. Tuivaga)
Chief Justice

Suva,
16th April, 1981.