

IN THE FIJI COURT OF APPEAL
Criminal Jurisdiction
CRIMINAL APPEAL NO. 68 OF 1983.

Between:

ISOA VOCEVOCE

APPELLANT

- and -

R E G I N A M

RESPONDENT

Appellant in person
J.V. Sabharwal for the Respondent.

Date of Hearing: 9th March, 1984.

Delivery of Judgment:

JUDGMENT OF THE COURT

SPEIGHT J.A. (Oral)

This man appeals against a sentence of 5 years and 10 strokes corporal punishment for an offence of robbery.

We note that he has a bad criminal record and is already serving sentences upon which the present one will cumulate. However the public needs protection from his criminal activities and no criticism can be made of the period of imprisonment.

A different consideration arises however in respect of the corporal punishment and for a rather unusual reason.

He was sentenced along with a co-offender Samuela Maraiwai. That man was being dealt with for

even more offences, including another robbery in which the present appellant was not involved.

In imposing sentence on Maraiwai the learned Judge said that imprisonment and 10 strokes would be imposed for the offences of robbery.

Maraiwai appealed to this Court on 3rd November, 1983. Sir Trevor Gould V.P. in delivering judgment demonstrated that such a pronouncement, made in respect of an appellant, who had committed two robberies meant 20 strokes which is of course in excess of the maximum of 12 permitted under Fiji law. Now doubtless the sentencing Judge was aware of the maximum and only intended the sentence to apply to one of the robberies, but as this Court said it could not be left to the prison authorities to interpret an ambiguous record. Consequently and purely on this technicality the Court felt obliged to allow the appeal insofar as it related to corporal punishment for Maraiwai.

No such difficulty arises with the present appellant for he only committed one robbery. But the situation will be that he will suffer corporal punishment whereas Maraiwai who committed more offences and worse offences and has a worse criminal history will have escaped that aspect.

Now it is frequently said that the Courts should strive to treat co-offenders with equivalent severity - nothing gives the impression of inconsistent treatment more quickly than disparate sentences and nothing causes greater discontent in prisons than the feeling that one man has for no apparent reason been treated more harshly than another of similar criminality.

As lawyers we can understand how the present situation has arisen - but it would not so appear to the

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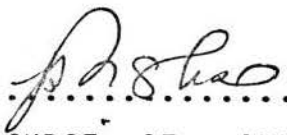
public at large, or to the prison inmates.

In accordance with the principles which have often been acted upon in cases of disparate sentences, this Court feels obliged to quash part of appellant's sentence dealing with the imposition of 10 strokes of corporal punishment.

As in the case of Samuela Maraiwai's, we make it clear that the result comes about because of a technicality and we refrain from making any observation on the propriety or otherwise of the sentence originally imposed, other than to confirm the period of 5 years imprisonment.



JUDGE OF APPEAL



JUDGE OF APPEAL



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