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IN THE FIJI COURT OF APPEAL
CRIMINAL APPEAL NO. 66 OF 1987

Between:

BAL KRISHNA

Appellant

- and -

THE STATE

Respondent

Appellant in person.
Mr. I. Mataitoga for the Respondent

Date of Hearing: 15th June, 1988

Delivery of Judgment: 24. June, 1988

JUDGMENT OF THE COURT

The appellant was convicted by the Supreme Court Lautoka on the 11th May, 1987 of 13 counts of larceny contrary to section 262(1) of the Penal Code.

The charges all related to larceny of goats which were stolen over a period of four weeks from 13 farmers in the Nadi, Lautoka, Ba and Tavua Districts. A total of 18 goats were stolen from farmers. Six goats were recovered by the police.

The appellant pleaded guilty to all 13 counts and was convicted and sentenced to 18 months imprisonment on each of the first two counts, to be served consecutively, and to 18 months on each of the remaining 11 counts to be served concurrently with the sentence on the second count.

The record shows that the appellant, with other persons were involved in the thefts and the other persons appeared to be the main instigators of the offences.

The appellant when approached by the police readily admitted being implicated in the series of thefts and assisted the police in recovering six of the goats.

The list of previous convictions put in by the prosecution indicates only one offence involving dishonesty, namely larceny. This should not have been included without a note indicating the offence had been committed after the dates the goats were stolen.

At the time the goats were stolen the appellant had no previous convictions for dishonesty.

We are concerned that the learned Judge should have made the sentence for the second offence consecutive to the first resulting in a total of 3 years imprisonment being imposed. We are informed by the Director of Public Prosecutions that 18 months imprisonment is about the normal range of punishment imposed by Fiji Courts for larceny of goats.

We are also concerned that the particulars of previous convictions indicated one for larceny. While counsel for the appellant in the Court below drew the learned Judge's attention to the fact that the appellant had no previous conviction for any offence involving dishonesty at the times the goats were stolen the learned Judge makes no mention of the previous conviction.

We are left in doubt whether or not the learned Judge was influenced by the previous conviction for larceny appearing in the list of previous convictions.

We have considered what the appellant has said in support of his appeal against sentence and what the Director has stated. We agree with him that theft of farm animals is too prevalent in farming districts.

The learned Judge when sentencing the appellant stated he had considered the principles of sentencing and particularly the "totality principle".

Thomas second edition of Principle of Sentencing at page 56 states the principle as follows:-

"The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is just and appropriate."

We also note that the offences committed by appellant were carried out within a relatively short space of time i.e. within a period of less than a month. Thus it would seem that sentencing should have been based on the "one transaction rule" so as to render inappropriate the use of consecutive sentences.

We are of the view that the totality of the sentence of 3 years was in all the circumstances excessive.

The appellant has served the sentence imposed on him (with remission for good behaviour) in respect of the first offence.

The appeal is allowed and the totality of the sentence is reduced to a term which will allow the appellant to be released forthwith.

T. J. J. J.
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President, Fiji Court of Appeal

R. S. S.
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Justice of Appeal