IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Appellate Jurisdiction
Criminal Appeal No. 18 of 1978

BETWEEN:

INOSA RATULEVU — Appellant

-and-

R E G I N A M — Respondent

Mr. D. Williams, Counsel for the Respondent
Appellant in Person.

JUDGMENT

The appellant pleaded guilty to perjury on 22/3/78 and received 18 months' imprisonment. He appealed against the sentence and I formed the opinion that the facts would not support the charge.

For convenience I set out the charge and particulars:

Statement of Offence

"Perjury: Contrary to section 109(1) of the P.C., Cap.11.

Particulars of Offence

"INOSA RATULEVU on 28th day of April 1976 at Lautoka Magistrate's Court, having been lawfully sworn as a witness in judicial proceedings namely Criminal Case 180/76 R v. Marika Yabaki and Others charged with murder contrary to section 228(1) P.C. did wilfully make a statement which he knew to be false namely that -

"I deny that I said in my statement that I ran towards them to see what was actually happening and that I stood and watched what was going on."

In the preliminary inquiry the prosecution alleged that Marika Yabaki and others kicked the deceased to death.

The police obtained statements from alleged eye witnesses including the appellant. His statement, Ex.A, shows that he was waiting for transport shortly after 12

midnight when he saw a fight near Mosese's house; that he went to within 12' of the disturbance; that he saw Semisi strike the deceased who slipped and fell whereupon others kicked him as he lay on the ground; that 13 men repeatedly kicked the deceased; that he could identify them although he only knew the names of some; that he was afraid to assist the deceased because he was greatly outnumbered; that he saw the deceased being carried to the verandah of a nearby house.

At the preliminary enquiry he denied informing the police that he had approached the scene and witnessed the incident from nearby. As indicated (supra) that denial was the foundation of the perjury charge.

When charged before the magistrate for perjury he said,

> "It is true I did say these words to the Inspector when he interviewed me but what I told the Inspector was false. In Court I told the magistrate that I had not said these words."
> I plead guilty."

The appellant was then convicted and sentenced.

It is clear that the accused lied to the magistrate conducting the preliminary inquiry when he denied informing the police that he had seen the incident. Was that lie material to the proceedings? I am inclined to the view that it was not.

I informed learned Senior Crown Counsel that I proposed to review the perjury proceedings and indicated my views generally. During the review Crown Counsel stated that he had not found any assistance from decided cases. My own researches brought forth little more. Accordingly, I am, to a great extent relying upon my own interpretation of whether the accused's untruth was material to the preliminary inquiry. One must remember that the accused's evidence that he had not told the police he had seen

Further, it is wrong in principle to subject a person to both an immediate and a suspended prison sentence, as the main object of a suspended sentence is to avoid sending the offender to prison (R. v. Sapiano (1968) 52 Cr.App.R.674; R. v. Butters (1971) 55 Cr.App.R. 515; and R. v. Uraia Tukana (Suva Cr.App. No. 105/73)).

Finally, as both offences arose out of the same criminal transaction and are founded on the same facts, there is no justification for imposing different types of sentence.

The respondent, who was employed by Rabi Holdings Limited as a copra buyer in Taveuni, fraudulently converted to his own use the sum of $5,570.67 which had been entrusted to him by Rabi Holdings Limited to purchase copra on their behalf, and in an apparent attempt to cover up the defalcation he made false returns purporting to shew that he had purchased copra to the value of $1,345.59 on behalf of Rabi Holdings Limited when no such purchase had been made.

The trial Magistrate called for a probation report which disclosed that the respondent is fifty years of age, with a previous good record. He was a member of the Royal Fiji Military Forces from 1952 to 1956 during which time he served in Malaya. He ultimately worked as a copra grader for W.R. Carpenters, and in 1964 contracted leprosy and was admitted to Makogai Hospital until his discharge in 1969. He then worked for Fiji Times as a paper cutter until 1974 when he joined Rabi Holdings. The explanation which he gave for committing these serious offences was that he had been left short of funds because Rabi Holdings were paying his salary to his wife in Suva who was utilising the whole of it to support their children. After a careful consideration of the probation report the trial Magistrate considered that a sentence of imprisonment was necessary; and while one has sympathy with a man of the accused's age and previous history, I am impelled to the same conclusion.

The sentences imposed by the trial Magistrate are quashed and in substitution therefor, after taking into account the matters to which I have referred, the respondent is sentenced to six months' imprisonment on Count 1, and to twelve months' imprisonment on Count 2, the sentences to run concurrently with effect from the 28th April 1978.

(Sgd.) Clifford H. Grant
Chief Justice

Suva,
31st July 1978.