

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No.64 of 1981

Between:

SHAN ALI  
s/o Amzad Ali

Appellant

and

REGINAM

Respondent

Appellant in person  
J. Sabharwal for the Respondent

Date of Hearing: 1st March, 1982

Delivery of Judgment: 1st March, 1982

JUDGMENT OF THE COURT

Gould V.P. (Orally)

The appellant pleaded guilty to a charge of committing an act with intent to cause grievous harm (namely, unlawfully wounding the complainant with a knife); he was at the time in company with one Timoci Koro who in fact was the one who inflicted the injury. The appellant's part was to entice the complainant out of his house so that he could be attacked by Timoci Koro, who was in hiding outside. Koro first attacked the complainant with his fists and then took a pen knife from his pocket and inflicted a dangerous wound.

The Resident Magistrate, after the pleas of guilty, committed both accused to the Supreme Court for sentence. Timoci Koro had an appalling list of previous convictions, whereas the present appellant had none at all.

The Supreme Court sentenced Timoci Koro to imprisonment for eight years and the appellant for five years.

The appellant who is only 22 years of age has no legal representation in this Court, but there are two points which can be taken in his favour.

One is his clear previous record, which was of course given weight in the Supreme Court: But there still could be some risk that he might have suffered some prejudice because of the very bad list of convictions of his companion.

The second, and more important, is that there was no statement at any time in either of the courts below as to whether the appellant knew that Timoci Koro was carrying the knife which he produced and used at the secondary phase of his attack upon the complainant. It is a matter which should have been dealt with in clear terms in the courts below. We are of the opinion that the appellant must be given the benefit of the doubt that this factor gives rise to.

We allow the appeal and reduce the term of imprisonment imposed upon him from 5 years to 3 years.

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Vice President

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Judge of Appeal

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Judge of Appeal