IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Criminal Appeal No. 59 of 1984

Between:

1. SAIRUSI KOTO
2. ALIPATE BALEDROKADROKA — Appellants

- and -

R E G I N A M — Respondent

Both Appellants in person
E. Tavai for the Respondent

Date of Hearing : 30th October, 1984
Date of Judgment : 30th October, 1984

JUDGMENT OF THE COURT

Casey, J.A. (Orally)

A Chinese family were attacked and robbed of $305.00 by a gang at 11p.m. on the 10th December, 1983 when they were taking the proceeds from their restaurant home on a clear night. Both accused were found guilty of robbery with violence and sentenced to 4½ years' imprisonment. They appealed against conviction and sentence appearing in person at the trial and on their appeals.

They advanced a number of grounds. Koto pointed to discrepancies in the evidence and submitted that the learned Chief Justice had not dealt with them properly or

given an appropriate direction to the assessors on the crucial question of identification. Evidence was given by the son and daughter of a robbery but they could not identify the assailants. They said they were attacked after they got out of the van in which they had all been travelling. And their father said it happened after he had turned out the vehicle's lights, although he claimed to have seen the first appellant before then. His wife also said that she identified him. Their cries for help were heard by a group of young men returning from soccer practice who went to their assistance.

Aminio Vakaloloma gave evidence of seeing the second appellant (Baledrokadroka) striking the father, and he attacked him and knocked him out and said that he was sitting on him until the police arrived a little time later. The Chief Justice said that he was more or less caught red-handed. This appellant suggested in his address to the Court that he had been injured in an argument that started before the assault and robbery had occurred but there was no evidence to support this claim. He told the police that he was too drunk to remember, while in his submission he said it was the blow which knocked him out and caused him to lose his memory of the events. He complained that the Judge did not mention this to the assessors; he discussed the explanation that he was drunk and told them they had to be satisfied that this appellant realised and appreciated what was happening before they could convict him. There was clear evidence of his involvement in the assault and robbery and his appeal against his conviction is dismissed.

In the case of the first appellant (Koto) the critical issue, as he recognised in his submission, was identification. One of the young men in the group of

soccer players, Jone Tawake, said that he fought with him for about three minutes and that the van lights were on, although he qualified this later by saying it was only the parking lights. He also said that he wounded him in the face, after which Koto ran away. Then the police arrived and Jone Tawake was driven in their vehicle around the area. Within half an hour of the incident he claimed to have recognised this appellant walking along the road as the person with whom he had fought, and referred to the injury on his face. A doctor examined this at 12.20a.m. on the 12th December and described it as a cut above the eye-brow of recent origin. The signs of healing suggested it would have been inflicted over 24 hours before and clearly this evidence is consistent with Jone's description of having wounded him on the face and seeing this on the man he identified shortly afterwards.

Koto submitted that the learned Chief Justice had pressurised the doctor into qualifying his earlier evidence so that it fitted in with the prosecution case but our study of the relevant passage in the record satisfies us that this was not so; he was merely trying to clarify how recently the doctor thought the injury had occurred. This evidence could clearly be accepted as valuable support of Jone's identification.

In spite of Koto's criticism we are satisfied that the Chief Justice clearly put the conflicts and weaknesses in the identification evidence to the assessors in a way that satisfies the requirements of R. v. Turnbull (1976) 63 Cr.App. R. 132. He pointed out that the two senior Chinese people - Mr. Chung Sun and his wife - had never seen Koto before in their lives. He drew attention to their evidence that the lights on the van had been turned out and said the question

for them was whether there was sufficient light to enable the witnesses to identify the appellant. He pointed out that there was no formal identification parade and he referred to Jone's evidence, again referring to the question of whether there was sufficient light, and pointed to the corroboration afforded by the injury.

Mr. Koto called alibi evidence stating that he had been with a girl over the time in question and was not present at the scene of the robbery. The learned Chief Justice correctly referred to this as an issue of credibility and again emphasised at the conclusion of his summing up that the assessors had to be satisfied with the identification evidence. We consider there was ample evidence on which the appellant could be convicted and that the matter was left properly to the assessors. It would have been wrong for the learned Chief Justice to withdraw the case from them, as Koto submitted he should have. He gave a proper direction and we see no reason to interfere with the verdict and the appeal against his conviction is also dismissed.

Turning to the appeals against sentence we consider that $4\frac{1}{2}$ years was lenient for a crime of this violence. Indeed, having regard to the seriousness and the prevalence of these offences against shopkeepers and small traders we gave serious consideration whether the sentences should be increased. We have decided to let them stand, and both appeals against sentence are also dismissed.

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Vice President

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Judge of Appeal

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Judge of Appeal