IN THE FIJI COURT OF APPEAL

Criminal Appeal No. 53 of 1986.

Between: JAG PRASAD s/o Sarju Prasad

Appellant

\- and -

REGINAM

Respondent

Appellant in person.
Mr. J. Semisi for the Respondent.

Date of Hearing : 20th October, 1986

Delivery of Judgment: November, 1986.

JUDGMENT OF THE COURT

Speight, V.P.

The above named appellant, who appears in person, was convicted of housebreaking in the Supreme Court at Suva on 29th of July 1986 before Mr. Justice Govind and three assessors. The case was a very straightforward one and the point on appeal turns solely upon identification of the appellant as the alleged offender.

There had been no doubt that the home of Mr. and Mrs Nair in Fletcher Road was entered on the 11th of March last at a time when the occupants were away, and a minor article, namely a towel, was stolen. The principal evidence

was that of PW2 Detective Constable Basiyalo. His evidence was that he had been passing on foot when he saw a man trying to remove a louvre from a window of the house. The person succeeded in doing this and went inside. The policeman crossed the road and came within three yards of the man he was watching, who apparently took fright and ran from the back of the house. He made his way down the road and entered a passing taxi, and the policeman was able to follow immediately after him in another taxi and caught up with him at Vatuwaqa. The first occupant jumped out and ran to a cassava plantation, with the policeman hot on his heels, and he was eventually caught and arrested. PW2 was adamant that he had a clear view of the culprit from the very first, and that there had been no chance of him losing sight of the quarry during the chase. The prosecution also tendered another witness Constable Gounder who had interviewed the appellant at the police station and claimed to have taken a confessional statement from him. The admissibility of this document was challenged in a voir dire hearing, and the learned trial Judge ruled that it had not been shown to his satisfaction that the statement was a voluntary one and this evidence was excluded from the trial proper. The learned trial Judge made some critical observations concerning the nature of the evidence tendered and we agree with the tenor of his remarks.

At the continuation of the trial proper, the appellant gave evidence. He agreed that he had been apprehended after a taxi ride but denied that he had been the offender at the scene of the crime. The learned trial Judge's summing-up to the assessors was brief but in our view totally adequate.

He correctly highlighted this as being a case depending solely upon the confidence which could be reposed in the policeman's evidence. He discussed, in appropriate terms, the possibility of even an apparently honest witness being mistaken and he gave examples, in a way with which we are now all familiar, of the perils of lack of opportunity - poor visibility - brief observation - lapse of time and similar matters.

In support of his appeal, the appellant filed a letter enumerating sixteen points in all and he elaborated further in court on his own behalf. He criticized aspects of Detective Constable Basiyalo's evidence and in particular pointed to some minor inconsistencies such as whether there had been two or three louvre blades removed; whether he had been taken to CWM Hospital after the event whereas in truth it had been to the Raiwaqa Health Centre; and other matters. We note that the trial Judge had drawn the assessors attention in his summing-up to some such inconsistencies and had also pointed to a variation by the Constable from an earlier report written by him. We do not think that there is any substance in this complaint for these matters were clearly brought to the attention of the assessors, and were not sufficient in their view to deter from a conclusion of guilt. Nor do we think that they are of such substance as would call for any interference at our hands.

Complaint was also made that the taxi drivers were not called as Crown witnesses but this could have little

relevance because neither driver would have seen the crucial event prior to the taxis being used.

Similarly it was claimed that there was no evidence of any tools being used, and no production of the stolen towel. Neither point has any relevance to the question of identification. We have given careful thought, as we must, to all the points raised, but we can see no grounds for any dissatisfaction with the verdict which was returned. The appeal against conviction is dismissed. There was no appeal against sentence.

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Vice-President

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Judge of Appeal

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Judge of Appeal