

IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. AAU0016 OF 94

(High Court Criminal Case No. 18 of 1993)

BETWEEN:LEPANI VARANIAPPELLANT

-and-

S T A T ERESPONDENT

Appellant present unrepresented
 Ms N. Shameem for the Respondent

Date and Place of Hearing : 22nd February and 1st March 1995
 Suva

Date of Delivery of Judgment : 1st March 1995

JUDGMENT OF THE COURT

The appellant in these proceedings appeals against both his conviction and sentence. On the 14th March 1994 he was convicted on two counts of robbery with violence; on the same day he was sentenced to 6 years imprisonment on count 1 and to 12 months imprisonment on count 2 those sentences to be served concurrently; and on the same day the appellant filed the appeal the subject of these proceedings.

Grounds of the Appeal

1. Improper identification of the appellant - Grounds 1 to 4 inclusive.
2. Absence of corroboration - Ground 5
3. No previous convictions for robbery with violence - Ground 6

4. One of the assessors delivered a "not guilty" opinion - Ground 7.

Facts of the Case

On the 11th June 1993 Mr Mudaliar the Post Master at Korolevu was at home with his wife and family. The time was about 9 p.m. Two men approached his house and asked to use his phone to obtain the assistance of an ambulance for a nearby accident.

Mr Mudaliar agreed to what he believed at the time was a reasonable request. However he and his wife were suddenly attacked by these two men. At the same time two further men entered the house and joined in the assault. Mr and Mrs Mudaliar were tied up and gagged; and they were subjected to a most terrifying ordeal by these four intruders. For example Mrs Mudaliar had her hands and legs tied; she gave evidence of how the appellant sat in her lap; took rings from her finger; and threatened to cut her ears if she did not hand over her jewellery.

After subjecting Mr and Mrs Mudaliar to these and many more indignities for some 20 minutes, the four intruders packed a bag with goods stolen from the house to the value of \$2391.00. These included \$310 in cash. They then left the property in Mr Mudaliar's car which was parked in his garage.

The Police were immediately notified of the robbery. They set up a road block at Nalawa which failed to stop Mr Mudaliar's stolen

vehicle no. BQ 560. The Police pursued this vehicle until it was forced to stop on a no-exit road. The accused and two others ran off from the car and were pursued by the Police Officers. P.C. Luke caught the accused as he was running away from the stolen car. The other two were never arrested. The fourth intruder had already left the stolen vehicle prior to it being stopped by the Police.

The accused was arrested; taken to the Police Station; signed an acknowledgement of the charge statement prepared by D/Sgt Alifereti; and signed a Record of Interview Statement prepared by D/C Dan admitting his involvement in the violent robbery the previous day.

The Trial

The trial commenced on the 28th February 1994 in the High Court of Lautoka before a Judge and three assessors.

Nine witnesses for the prosecution were called. The appellant was the only witness for the defence.

Trial within a Trial

In the course of the trial the appellant objected to the interview under caution recorded by D/C Dan; and the charge statement recorded by D/Sgt Alifereti. Six witnesses gave evidence as to their involvement with the appellant at and after his arrest. They all denied the appellant's allegations of assault and that the

admissions by the appellant were made by him because of the assault, threats and oppressive conduct of the Police.

The appellant also gave evidence but significantly had no complaint to make against D/C Dan who attended to the interview under caution; or against D/Sgt Alifereti who recorded the charge statement.

After consideration of the evidence and a reasoned judgment the Court found as follows:-

"In all the circumstances of this case there was no evidence that the Accused only made the statements because of unfair or oppressive methods used by police and I cannot find that the statements were obtained by unfair or oppressive means. I find that they were voluntarily made, not induced by assaults or threats or inducements. Interview and charge statements will therefore be admitted."

The Defence

The appellant elected to give an unsworn statement in his defence. He denied being involved in the robbery; he alleged he was stopped by police officers at Makosoi after getting off a bus and was asked to get into the Police van, which he did; and that in the process he was assaulted and was unconscious.

The trial concluded on the 14th March 1994 when two assessors gave as their opinion that the accused was guilty on both counts; the 3rd assessor gave as his opinion that the accused was not

guilty on both counts. The majority opinions of the assessors were accepted and the appellant was convicted on both charges.

Identifications

The appellant in his appeal against conviction challenges his identification whereby he has been charged on these two counts of robbery with violence. For example he claims that no identification parade was held. That is perfectly correct. One must ask however why such a parade should be held. Both Mr and Mrs Mudaliar were able to clearly identify the appellant during the 20 minutes he was in their house.

One lamp was left burning so that identification of the undisguised appellant was quite simple. Of more importance however is the appellant getting out of the stolen car when driven into a blind road and running away. He has provided no explanation for this action. Nor has he provided any explanation for all the stolen property produced at the trial and which was still in the stolen vehicle from which the appellant had alighted. The identification of the appellant is therefore conclusive.

Further Grounds of Appeal

The appellant claims as a further ground of his appeal that there is an absence of corroboration. If the appellant is referring to issues raised in his cross-examination of Mr Mudaliar then I refer specifically to the Judges notes on pages 12 and 16:-

"Q. When I first entered the house did I say anything to you?

A. No.

Q. When I entered the house what was I carrying?

A. I don't know which weapon you were holding.

Q. When I entered the house did I speak to you?

A. No."

Rather than an absence of corroboration as alleged the appellant in his questions on cross-examination has clearly identified himself as being in the house when the robbery was committed. Of course this is nothing more than confirmation of the evidence already provided by Mr and Mrs Mudaliar.

Finally the fact that one assessor expressed an opinion that the appellant was not guilty is not as claimed a ground of appeal against conviction.

Submissions by the Appellant

The appellant was not represented by counsel at this appeal. He had prepared submissions in the Fijian language which he presented to the Court. Accordingly the case was adjourned to enable those submissions to be translated into the English language. This has now been completed and the translation certified as correct.

We have carefully considered those submissions. They are critical of evidence provided by a large number of witnesses whom

he named. They refer to inconsistencies in the evidence given by different witnesses. They allege that the trial Judge did not reject the evidence of those witnesses who were telling lies.

In general the appellant maintains his innocence and challenges the prosecution evidence as contradictory and contends that he was not properly identified.

We have accorded those submissions a most liberal interpretation favourable to the appellant to ensure that he is not prejudiced in any way as a result of his not being represented by counsel. We find no merit in his written submission against conviction.

Conclusion

We are therefore left in no doubt that in this case there has been the clearest identification of the appellant; and of his association with the three other men who have not yet been apprehended; and who together carried out a violent assault and robbery on Mr and Mrs Mudaliar.

The appeal against conviction is dismissed.

The appellant also appeals against the sentence of 6 years on count 1; and 1 year on count 2, the terms to be concurrent. The appellant has a most unfortunate record of twenty-nine previous convictions only two of which have not involved a term of

imprisonment. The appellant was involved in a most serious intrusion into the home of Mr and Mrs Mudaliar where that couple were assaulted gagged and trussed up. They were subjected to serious threats against their person; they feared for their lives; and all this over a prolonged period of some 20 minutes. Goods to the value of \$2391.00 and a car were stolen.

We are unanimous that the trial Judge was correct in imposing a deterrent sentence. The term of 6 years in our opinion was fully justified.

The appeal against sentence is also dismissed.

Moti Tikaram

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Sir Moti Tikaram
President Fiji Court of Appeal

I.R. Thompson

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Mr Justice ~~Ian R.~~ Thompson
Judge of Appeal

J.D. Dillon

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Mr Justice J.D. Dillon
Judge of Appeal