

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0052 OF 2005S
(High Court Criminal Action No. HAC 012 of 2005S)

BETWEEN:

EMIRAMI SAURARA

Appellant

AND:

THE STATE

Respondent

Coram:

Ellis, JA
McPherson, JA

Hearing:

Monday, 11th June 2007, Suva

Counsel:

Appellant in Person
D Bulamainaivalu the Respondent

Date of Judgment: Monday, 25th June 2007, Suva

JUDGMENT OF THE COURT

- [1] Emirami Saurara was on 18 April 2006 refused leave to appeal against a sentence imposed in the High Court on 4 July 2005 in respect of two offences. The offences, which were robbery with violence and unlawful use of a motor vehicle, were committed outside the business premises of Tappoos Limited at Sigatoka on 9 November 2004 at about midday.
- [2] At that time, an employee, Ganesh Muni Chandra, of Tappoos Limited was about to do the company's banking using his employer's car. Two other employees Rajneel

Rajnesh Kumar and Naren were with him. They brought to Chandra at the car a briefcase full of money and cheques. It was placed in the boot of the car and the three of them got into the car with one of them seated in the back seat.

[3] Chandra, who was driving, had just begun to reverse the vehicle when the applicant Saurara and two companions came to the car and opened the driver's door, at which Chandra stopped the vehicle and switched off the engine.

[4] The assailants were wearing masks at the time. Chandra was punched three times on the chest and was pulled out of the driver's seat and thrown on the road. He suffered bruises to the chest and an injury to the middle finger. The other two occupants of the car were meanwhile being threatened with rods and sticks until they made their exit from the car, which was then driven away from the scene at high speed with the offenders inside.

[5] The vehicle was later located abandoned at Waibogi Road Sigatoka, but the briefcase and its contents were gone. It had contained \$11,307.65 in cash, cheques to the value of \$580,632.61, and foreign currency to the value of \$1,624.00. The three offenders shared the money in the briefcase, and at the time of his arrest a sum of \$2,175.00 in cash was found on the applicant now before us.

[6] At the time of sentencing the applicant, who is single, was a young man of 22 years of age. He had been educated to Form 5 and appears to have commenced some form of training at the Fiji Institute of Technology. He was unemployed and had been living with family at Nailaga Village in Ba. He has since August 2000 committed six previous offences of robbery with violence, so that this was his seventh offence of that kind. The last of those previous six sentences attracted a sentence of 3½ years imprisonment in September 2001.

[7] The learned sentencing Judge took into account in the applicant's favour his pleas of guilty, which had effected a significant saving of cost for the community. His

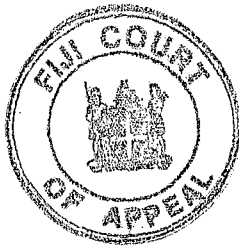
Lordship considered that the starting point for this sentencing for robbery with violence was 10 years, which he notionally reduced to 6 years on account of the guilty plea, while making the sentence of 6 months for the unlawful use offence concurrent with the 9 years which in the end he imposed. In using this starting point, his Lordship adopted what was said by the Fiji Court of Appeal in *Raymond Sikeli Singh v State* (AAU008/2000), which relied on the decision in New Zealand in *R v Mako* [2002] 2 NZLR 170. In that instance the Fiji Court remarked that for “very serious armed robberies” a starting point of about 10 years was appropriate.

[8] The question here therefore is whether the robbery in this case can properly be considered as being in this “very serious” category. It was a bold offence, being committed in broad daylight by a group of three men who were masked and armed. It involved the use of physical violence causing some, but not extensive, injury to the driver Chandra, and the use of threats of violence against the other two. It would without doubt have been a frightening experience, with emotional consequences for all three victims. In taking over the vehicle and using it to make their escape, it afforded an instance of a form of highway piracy that is becoming widespread in other parts of the world. It would be regrettable if it took root here in Fiji. The amount or value of the money and cheques taken was very large, even though some of it was later recovered. The sentences were ordered to date from sentencing on 4 July 2005 because the applicant had been allowed bail until that date. The method of using a starting point of 10 years for sentencing produced a notional head sentence (or so his Lordship said) of 9 years, which, with a discount of three years, allowed for the guilty plea, reduced it to an effective sentence of 6 years. However, the learned Judge considered that the offence was significantly aggravated by the planning, the violence and the large amount involved, as well as by the six similar prior offences of robbery recorded against the applicant since 2000, with the consequence that the sentence was brought back to 9 years.

[9] This may well be a heavy sentence for a young man of 22 years; but he has shown a degree of persistence in committing offences of this kind. In addition, the offences

were committed after Parliament had in 2003 passed the Penal Code (Penalties) (Amendment) Bill. That Act (now s.33 of the Penal Code) demonstrates Parliament's concern at the rising incidence or level of violent offences in Fijian society. To this the applicant's record of 7 offences since August 2000 has contributed its share.

[10] We therefore do not consider that the sentencing Judge's method or the exercise of his discretion in fixing the level of punishment in this case miscarried or is open to criticism or liable to be interfered with. The application for leave to appeal is therefore dismissed.



A. R. Ellis

Ellis, JA

B. McPherson

McPherson, JA

Solicitors:

Appellant in Person
Office of the Director of Public Prosecutions, Suva for the Respondent

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