

- [2] The appellant was dissatisfied with the decision, and on 30th April 2008, filed an appeal against conviction and sentence. On the day of the hearing, he abandoned his appeal against conviction. He maintained his appeal against sentence, which were on the following grounds:
- (i) That the sentence was harsh and excessive, and wrong in principle;
 - (ii) That the learned Trial Judge erred in law and fact in taking irrelevant matters into consideration when sentencing the appellant;
 - (iii) There was a disparity of sentence, and the appellant should have got the same as Dick Shepard (4 years imprisonment) or half of Guston Kean (5½ years imprisonment).

- [3] Before discussing the appeal, what were the facts? This case concerned a man, his wife and two sons aged 12 and 13 years, at the time. The man operated 8 taxis from R. B. Patel Centre Point. On 2nd September 2005, at about 2.30am, he had \$12,000 in taxi business income in his drawer. His family was fast asleep at the time. Suddenly, his dogs were barking and eight masked men broke into his house, armed with bolt cutters, pinch bars and knives. His front door was smashed open. His whole family was threatened with serious injuries if they resisted. The men demanded money. They stole his \$12,000 and two watches, and later fled the scene. According to the Trial Judge, the appellant was a principal planner and facilitator in this robbery. He played a critical role in the robbery.

- [4] **Appeal Ground No. 1 – the sentence was harsh and excessive:**

Robbery with violence carries a maximum sentence of life imprisonment. The tariff is a sentence between 6 to 14 years imprisonment: *State v Basa*, Criminal Appeal No. AAU 0024 of 2005, Fiji Court of Appeal; *Wainiqolo v State*, Criminal Appeal No. AAU 0027 of 2006, Fiji Court of Appeal; *Singh v State*, Criminal Appeal AAU 0008 of 2000, Fiji Court of Appeal. The trial judge started with 7 years imprisonment. His Lordship took into account the aggravating and mitigating factors, and arrived at 9 years imprisonment. This sentence was well within the tariff

for "robbery with violence" in a home. It was not harsh and excessive. This ground therefore fails.

[5] **Appeal Ground No. 2 – Trial Judge erred in taking irrelevant matters into consideration when sentencing the appellant:**

We have carefully looked at the trial Judge's sentencing remarks. His Lordship referred to the relevant authorities in paragraphs 4 and 5 of his sentence, and the common aggravating factors in paragraph 7. In the appellant's case, His Lordship dealt with all the relevant factors in paragraphs 14 to 20. In our view, His Lordship took all relevant matters into account, when sentencing the appellant. This ground must be dismissed.

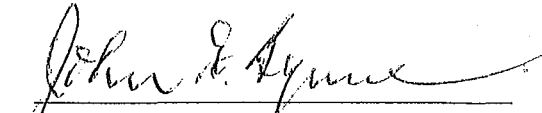
[6] **Appeal Ground No. 3 – There was a disparity of sentence, and the appellant should have got the same as Dick Shepard (4 years imprisonment) or half of Guston Kean's (5½ years imprisonment):**


In *Singh v State*, Criminal Appeal No. AAU 0008 of 2005, this court said the following, "...Each of the appellants contended that other persons who had committed the offences similar to those with which they were charged had received lighter penalties. As far as it is possible to do so in a just society people should be treated in a similar way in similar circumstances. The difficulty comes in making an adequate comparison sufficient to determine what are similar circumstances. In every case the weight which will be given to particular factors must differ and inevitably it will often be extremely difficult to determine what weight was given in individual cases to individual factors. To that extent comparisons can never be mathematical and never exact. Even persons involved in the same offence may need to be dealt with in different ways (as occurred in this case) because their participation is different or because different considerations apply to them. That will for example be the case where one offender is very young and others are not..."(page 7).

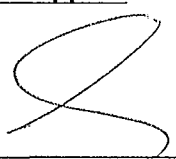
[7] In this case, the trial judge applied the above principle. His Lordship started with a 7 years prison sentence for each accused. He considered the common aggravating factors in paragraph 7 of his sentence. For Dick Shepard (accused No. 1), His Lordship considered the mitigating and other aggravating factors from paragraphs 9 to 13. For the appellant, His Lordship considered the additional aggravating and mitigating factors from paragraphs 14 to 20. For Guston Kean (accused No. 3), His Lordship considered the additional aggravating factors and mitigating factors from paragraphs 21 to 27. In our view, there was no disparity of sentence. Each accused was sentenced after taking into account their personal history, characteristics, and their individual role in the commission of the crime. This was in accordance with the principle mentioned above. This ground therefore fails and is accordingly dismissed.

8. In summary, the appellant's appeal against sentence is dismissed.




Hon. Mr. Justice John Byrne
Acting President


Hon. Mr. Justice Kankani Chitrasiri
Judge of Appeal


Hon. Mr. Justice Salesi Temo
Judge of Appeal

AT Suva
29th September 2010

Solicitors:
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Office of the Director of Public Prosecutions for Respondent