IFEREIMI TABUA

v.

REGINAM

[COURT OF APPEAL, 1963 (Marsack V.P.; Hammett J.A.; Knox-Mawer J.A.), 7th, 10th January.]

Criminal Jurisdiction

Criminal law—sentence—rape.

The appellant was convicted of rape and sentenced to seven years' imprisonment and twenty-four strokes of corporal punishment. The complainant, who was a girl of eleven years, received brutal and painful injuries and would suffer grave disability in the future. The court found no reason to interfere with the sentence.

Reported as to appeal against sentence only.

Appellant in person.

Palmer for the Crown.

Judgment of the Court [10th January, 1963]—

This is an appeal against the conviction of appellant in the Supreme Court at Lautoka on the 17th September, 1962, for rape, and against sentence of 7 years' imprisonment and 24 strokes of corporal punishment.

The grounds of appeal against conviction are that certain witnesses who gave evidence for the prosecution were unworthy of credence, and that the verdict cannot be supported on the evidence adduced at the trial. We can find no substance in these contentions. There was an overwhelming body of evidence which, if accepted, proved beyond reasonable doubt that the crime of rape had been committed and that it was appellant who had committed it. In our opinion the finding of the learned trial Judge, supported as it was by the unanimous opinion of the assessors, was thoroughly justified by the evidence and no grounds have been shown for setting aside the verdict. Accordingly the appeal against conviction will be dismissed.

With regard to the appeal against sentence, we give due consideration to the fact that a sentence of 7 years' imprisonment is a severe one when judged by the standard normally adopted in the Courts in Fiji in cases of rape, and that the corporal punishment ordered is the maximum for which provision is made under the Ordinance. At the same time we have not lost sight of the fact that the maximum term of imprisonment in cases of convictions for rape is imprisonment for life.

The learned Chief Justice in giving judgment refers to this as one of the worst cases of rape which he has tried. It would, in fact, be difficult to imagine a worse case. The complainant, a girl of 11, received brutal and extremely painful injuries, and the medical evidence makes it clear that she will suffer grave physical disability in the future in the event of her bearing children. It is quite clear that the case is one calling for a heavy sentence.

This Court must be careful not to substitute its own sentence for that of the trial Judge unless the Court is satisfied that the sentence is manifestly excessive in view of the circumstances of the case, or that a wrong principle has been applied. Neither of these conditions obtains here.

The case bears a remarkable similarity to that of Eremasi Koroi (Appeal No. 13 of 1959) in which this Court refused to disturb a sentence of 5 years' imprisonment and 24 strokes of corporal punishment for rape. The instant case may indeed be considered a graver one than that of Eremasi Koroi. It must in any event not be forgotten that appellant at the time of his commission of the crime was a policeman.

Applying the principles upon which this Court must act in respect of appeals against sentence we can find no justification for interfering with that passed in the Supreme Court.

Appeal against sentence is, therefore, also dismissed.

Appeal dismissed.

Solicitor-General for the Crown.