REGINA

v.

SHAUKAT ALI

[SUPREME COURT, 1976 (Williams J.), 23rd July]

Appellate Jurisdiction

Criminal law—sentence—act causing grievious bodily harm—suspended sentence inappropriate in cases where serious injury caused—assaults involving use of cane knives invite immediate, deterrent, custodial sentences—Penal Code (Cap. 11) ss. 255 (a), 258.

Criminal law—plea—proper for prosecution to accept plea to lesser offence if in interests of justice and not expediency.

The accused had attacked the complainant with a cane knife causing serious injuries to his arm, and resulting in his hospitalisation for 25 days. On a plea to a lesser offence under Penal Code s. 258, the magistrate imposed a fine and a suspended sentence after taking into account the mitigation put forward by the accused's counsel that the accused had been acting under the belief that the complainant had violated his sister.

Held: Assaults with cane knives had become increasingly numerous and required immediate deterrent and custodial sentences. A man should not escape immediate imprisonment by saying that he was provoked into carrying out the attack through rumours that the victim had violated his sister. It was a mere act of revenge which did not warrant a suspended sentence.

Per curiam: 1. It was noticeable that accuseds represented by counsel facing serious charges, maintained guilty pleas upto the day of trial, and, then tendered pleas of guilty to lesser offences. There was nothing improper in the prosecution accepting such pleas if it was in the interest of justice, but there were too many occasions when such pleas were accepted in the interests of expediency.

2. A fine and suspended sentence in the present case could have produced illogical results in that the accused, in default of payment of the fine, could have been sent to prison whilst still subject to a suspended sentence.

Cases Referred to:

D.P.P. v. Majewski (1976) 2 All E.R. 142; (1976) 2 W.L.R. 623.

Appeal by the Crown against the sentence in the Magistrate's Court for causing grievous bodily harm.

S. P. Wilson for the appellant
K. Govind for the respondent.

WILLIAMS J. (22nd July 1976)—

This is an appeal by the Crown against a magistrate's sentence in a case of causing grievious bodily harm contrary to section 258 of the Penal Code.

The accused pleaded guilty and received a sentence of 2 years imprisonment suspended for three years, in addition to a fine of $200.00 or 6 months imprisonment in default.

The accused was originally charged under Section 255 *(a)* of the Penal Code that he on 22nd September 1975 with intent to maim did grievous harm to Yaswas Prasad.

On 23/9/75 he appeared in court with his counsel Mr G. P. Shankar and pleaded not guilty. On 29.9.75 Mr Govind had taken over the defence. The case was repeatly mentioned until the 3rd May 1976 when it was set down for trial on 11/6/76.

I have noticed repeatedly that accuseds facing serious charges and represented by counsel plead not guilty up to the day of trial and then tender a plea of guilty to a lesser offence which is invariably accepted by the prosecution. There is nothing wrong in that procedure provided the lesser offence is one which the prosecutor can honestly and in the interests of justice properly agree to. However, instances have occurred of the prosecution accepting pleas to a lesser offence when the evidence available justified a rejection of the lesser pleas and a decision to proceed on the major charge.

I mention this because of the facts in this particular case.

At 1.00 p.m. the complainant was driving a tractor towing an empty truck when the accused stopped him and suddenly struck the complainant on the right arm with a cane knife. The accused is a cane cutter and it is appears that the complainant transports or moves the cane. The complainant ran from the tractor and was pursued by the accused for a distance of 5 chains when he fell down calling for help. The accused struck at the complainant again with the knife and was finally driven off by one Subramani who armed himself with stones. The accused left the scene and met police who had already been alerted and gave himself up to them.

The accused informed the police that the complainant had kicked him and that the complainant had boasted of having a love affair with the accused's sister.

The complainant received very severe cuts on both arms which both needed considerable surgery and stitching and he was detained in hospital for 25 days.

Those facts were admitted by Mr Govind for the accused subject as he said to certain qualifications. Mr Govind emphasized the accused's belief that the complainant had violated the accused's sister and submitted that this was an outrage in an Indian family. He also alleged that the complainant kicked the accused when the latter stopped the tractor and asked about his sister. He urged difilement of the sister as a great provocation and said it was enough to cause any Indian male to become furiously angry.

I cannot understand why the prosecutor, in possession of evidence of the nature I have indicated, accepted a plea to the lower charge. Although the accused probably carried a cane knife in the course of his work this does not justify his using it to attack someone who was unarmed. The very mitigation put forward reveals that the accused had a grudge against the complainant. It was not an instant provocation as it may have been had he actually caught his sister having intercourse with the complainant, or if the complainant had suddenly boasted of it to him. The accused was

admittedly relying upon rumour. Apart from those factors, when he had struck the complainant once with a knife, he pursued him for 100 yards and struck him again. It was an attack which the accused pressed home in spite of the unarmed complainant's cries for help. Attention of the police authority should be directed to the undue readiness displayed by prosecutors in accepting pleas to lesser charges. Where this arises after such a prolonged lapse of time one is apt to consider whether the prosecutor really felt that acceptance of such a plea was justifiable.

Mr Govind, in an eloquent address drew attention to the peculiar position of the young unmarried female in an Indian family. He sketched a very vivid picture of the reactions of Indian males to the seduction of their unmarried women folk. His plea in regard to sentence was urged at length and with what was obviously considerable sincerity. But the whole of his plea was directed to the assumption that the complainant had in fact violated the accused's sister; even if that were so there could be no justification for the accused's behaviour unless, as I have stated, he became suddenly aware of this and his attack upon the complainant was immediately consequent thereon. One might extend this somewhat to the accused suddenly learning facts, which to his own thinking, pointed unerringly to the complainant's immoral behaviour with the accused's sister. What the accused acted upon was rumour. Does a person have to have his hands almost chopped off because of rumour?

As the House of Lords said recently in *D.P.P. v. Majewski* (1976) 2 All E.R. 142 at 146,

> "The facts are common place, in that so common place that their very nature reveals how serious from a social and public standpoint the consequences would be if men could behave as the appellant did and then claim that they were not guilty of any offence."

In *Majewski's* case the accused when hopelessly under the influence of drink and drugs committed some assaults and he unsuccessfully pleaded his drunken state as a defence.

I think the courts in Fiji should adopt a similar approach to crimes of this nature. Especially in the cane growing areas in the west of this island cane knives are constantly and regularly in use. They are always at hand. These courts have frequently stressed that assaults with cane knives are disturbingly numerous and that deterrant custodial sentences are necessary in order to inhibit the use of cane knives to settle disputes.

To quote the House of Lords—it would be serious from a social and public standpoint if a man charged with inflicting the most serious wounds upon another with a cane knife should be able to say, "I was provoked into doing it because of rumours that my victim had violated my sister," and thereupon be excused from immediate imprisonment.

The attack with the knife could scarcely have been other than an act of vengeance if the accused thought his sister had been violated. Her virginity, if in fact she had lost it, could not be restored. She was not being protected.

The magistrate's approach to the question of sentence was erroneous. This court has repeatedly reiterated that suspended sentences are not appropriate in cases of violence involving serious injury.

There is one other matter which I should mention in relation to the sentence. There was a fine of $200 and in default a sentence of 6 months' imprisonment.

If the accused defaulted in payment of the fine and this is possible when he is
A only a labourer, he would have gone to prison for 6 months and at the same time would be subject to a two years term which had been suspended for 3 years. A suspended sentence and a fine of that nature could produce a most illogical result.

I set aside the suspended sentence and impose a term of two and a half years' imprisonment. The fine of $200.00 is set aside and it is ordered that the $200.00 be refunded to the accused.

B *Appeal allowed. Suspended sentence set aside and immediate term of imprisonment imposed.*

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