

Appellate Jurisdiction

Labasa Criminal Appeal No. 16 of 1978

Between:

DIRECTOR OF PUBLIC PROSECUTIONS

- and -

JAI RAJ s/o Deo Nandan

JUDGMENT

This was a wounding case in which the respondent used a spear against his victim. The victim did not receive any permanent injury.

The learned Magistrate bound the respondent over for 12 months under section 35 of the Penal Code and imposed 9 months imprisonment suspended for 12 months.

The Director of Public Prosecutions appeals on the grounds that the Order for binding over was erroneous and the 9 months suspended was too lenient.

The proviso to section 35 clearly states that an Order under section 35 shall not be in addition to a term of imprisonment.

As to the 9 months imprisonment suspended for 12 months I note that the respondent ^{not} has/been to prison although he has convictions.

The Magistrate in this case is experienced in Fiji conditions. He knows his own area of Labasa and can draw upon personal knowledge which I do not have. He gave reasons for his sentence which I cannot say were other than from his own knowledge and experience.

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I suspect that if the wound had been more serious the Magistrate's approach would have been different.

After some hesitation, because use of spears and knives should be seriously deterred I uphold the sentence in this case.

The appeal against sentence is disallowed.

(Sgd.) J.T. Williams
Judge

Suva,
27th July, 1978