

Appellate Jurisdiction
Criminal Appeal No. 66 of 1980

000190

Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

and

RAJENDRA SHANKAR s/o
Ram Shankar

Mr. D. Fatiaki for the Appellant
Respondent in Person

JUDGMENT

On the 22nd May¹⁹⁸⁰ the respondent was convicted after trial in the Suva Magistrate's Court of an act intended to cause grievous harm contrary to section 255(a) of the Penal Code and was sentenced to a fine of \$100 or six months' imprisonment and also sentenced to two years' imprisonment suspended for three years.

The Director of Public Prosecutions appeals against the imposition of a suspended sentence upon the respondent in this case on the ground that it was manifestly lenient having regard to the nature and circumstances of the offence.

The facts in this case disclose that respondent and his married sister Nirmala Devi (P.W.1) live in different flats in the same building in Toorak Road, Suva. At about 10.30 p.m. on 10th April 1980 the respondent, for some reason which has not been clearly explained in the learned Magistrate's judgment, threw a kitchen knife in the direction where Devi was standing. The knife cut through her dress and caused a cut 2 cm long and 1 cm deep on the left side of her spine and required six stitches.

It was submitted on behalf of the Director that it was wrong in principle to impose a suspended sentence on the respondent having regard to his bad record of previous convictions.

It is not clear whether a dispute had arisen between respondent and his sister which may have caused respondent to be

hostile towards her. In any case according to the record she did not want to seek police action against her brother. It was their father who telephoned the police and this resulted in the proceedings against the respondent in the Court below.

In these circumstances I am not satisfied that this is a case in which an appellate court ought to interfere with the sentence of the trial Court whose discretion on sentence was in my view properly exercised. In any event I do not think it could be truly said that the sentence passed on the respondent was in the circumstances manifestly lenient.

The appeal is dismissed.



(T.U. Tuivaga)
Chief Justice

Suva,
31st October 1980.