

Between:

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ULIASI VEREVOU

and

REGINAM

Mr. H.M. Patel with Mr. Naresh Prasad
for the Appellant

Mr. S. Chandra for the Respondent

JUDGMENT

On 19th May 1980 appellant was convicted after trial in the Suva Magistrate's Court on two counts, namely robbery with violence contrary to section 326(1)(b) of the Penal Code and sentenced to four and a half years' imprisonment and unlawful use of a motor vehicle contrary to section 325 of the Penal Code and sentenced to six months' imprisonment.

The sentences were made consecutive.

The appellant's accomplice, one Sanaila Bukelevu was on 22nd April 1980 convicted on his own plea on the aforesaid offences and was sentenced to imprisonment for four years and six months respectively.

The appellant now appeals against both his conviction and sentence.

The appeal against conviction is on the ground that the evidence of P.W.3 was incapable of belief. Her evidence which was directed mainly to the second count was accepted by the ~~learned by~~ the learned Magistrate for the reasons set out in his judgment and against which I can find no criticism.

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As regards the main charge of robbery with violence the learned Magistrate accepted the evidence of the complainant, the taxi driver who, as is clear from the record, gave a clear and straightforward account of how the appellant who was at the material time armed with a broken bottle neck demanded money from him with menaces.

This appeal which is on the facts of the case must necessarily turn on the trial court's assessment of the credibility of the witnesses with regard to which an appellate court, as is well established, would not without good cause interfere. In my opinion there was ample evidence, if believed as it was believed, to fully justify the conviction entered against the appellant on the charge of robbery with violence.

The appeal against conviction must therefore be dismissed.

As regards the appeal against sentence it must be observed at once that the law takes a very grave view of people who rob taxi drivers with violence and there have inexcusably been many instances of this type of conduct in recent months. There can therefore be little sympathy from the courts for those people who commit such offences.

However, this general proposition does not absolve any court from having to consider the circumstances of each case before it separately and carefully. This must always be done lest the sentence meted out in any particular case suffers from lack of objectivity and thereby gives rise to a sentence much in excess of what the actual offence required having regard to the circumstances of the case.

In the present case the complainant after having handed over \$20 to the appellant was allowed to escape from the scene of the offence or perhaps to put it more accurately no one attempted to stop complainant when he ran off unharmed.

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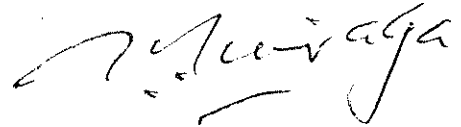
All this tended to show that there was no serious intention to harm him. If that was the case it certainly would not have needed a broken bottle neck to achieve such a purpose. From the evidence it could not be said that the robbery was planned beforehand by the appellant or any of the others who were passengers in the same taxi. They included two European men and a Fijian girl and a man, Sanaila Bukelevu who was appellant's accomplice to the robbery. It does not appear from the evidence that there was any sinister motive among these people at the time the taxi was hired to go to the Tamavua reservoir. The purpose with which they set out from Bali Hai nightclub was to continue their drinking party up at Tamavua. This is ^{further} borne out by the fact that even the complainant was offered some beer to drink when they got there. The atmosphere was friendly and sociable. As counsel for appellant pointed out, the offence was probably more an act spurred by a sudden realisation by the appellant that there was no money on him to pay for the taxi and the accompanying temptation to solve the problem through the complainant himself. Clearly this was not one of those cases in which a taxi driver would be lured out into a secluded place and then without much ceremony bashed up for his night's takings. The present case is not the worst of its kind.

In these circumstances I would agree with counsel for appellant that the sentence passed on the appellant, five years' imprisonment in all, was perhaps harsh and excessive.

Accordingly the appeal against sentence will be allowed. The sentence passed by the learned Magistrate is set aside and in lieu thereof and taking due account of his previous convictions appellant is sentenced to three years on the first count and six months on the second count to be served consecutively.

In pursuance of the revisional jurisdiction of this Court under section 306 of the Criminal Procedure Code I order that the sentence passed by the learned Magistrate on Sanaila Bukelevu in this case be also set aside and in lieu thereof

Sanaila Bukelevu is sentenced to three years on the first count and six months on the second count to be served consecutively.



(T. U. Tuivaga)
Chief Justice

Suva,
5th December 1980.