

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 34 of 1980

MATAIASI CURUSESE

Appellant

v.

REGINAM

Respondent

Appellant in person
Mr. A. Gates for the Respondent

JUDGMENT

The appellant was convicted by the Magistrates Court Suva of assault occasioning actual bodily harm contrary to section 277 of the Penal Code and was sentenced to four years' imprisonment.

He appeals against his conviction on the ground that the learned Magistrate ignored the defence evidence which tended to show that he had acted only to save himself from assault and that the learned Magistrate refused to let him call witnesses to support this.

The appellant is a prisoner and the particulars of offence alleged that he had assaulted a prison officer causing him actual bodily harm. He pleaded guilty but did not accept the prosecution outline of facts which made it appear that the assault was unprovoked. He said:

" Complainant hit me and I defended myself."

The learned Magistrate thereupon changed the plea and recorded -

"Plea Not Guilty entered."

The appellant was unrepresented.

Prison Officer Parshu Ram, called by the prosecution, gave an account of the incident which, if true, showed that the appellant had attacked him while he, Parshu Ram, was serving tea to prisoners. The account made the appellant's act look like a planned and unprovoked attack. In cross-examination he said:

" I did not hit Accused with truncheon. I had no truncheon.

I pushed him away from me but I did not inflict any particular blow.

I did not make to strike Accused.

I did not provoke him. There had been no previous trouble between us."

Appellant's version was that as he was walking towards his cell, he turned around and saw Parshu Ram with a raised truncheon about to strike him. He tried to protect himself but was struck to the ground. Another prison officer came and held him by the neck. The appellant had struck Parshu Ram with the lid of a bucket and tried to take the truncheon away from him. They had struggled on the ground exchanging blows, Parshu Ram with the truncheon, and he with his fist. He had caused Parshu Ram's face to bleed.

The following then appears on the record:

"Court: No need to cross-examine.

Accused: I wish to call witnesses.

Court: Why? You have admitted it in terms not substantially different from what is alleged."

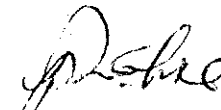
The learned Magistrate later said, "I accept the evidence of P.W.1 (Parshu Ram)" and convicted the appellant.

Learned counsel for the respondent concedes that this was, to say the least, irregular. The account given by the appellant was substantially different from what was alleged by Parshu Ram and the appellant had the right to call witnesses in support of his version. The respondent, under the circumstances, is unable to support the conviction.

I accept the respondent's submission and set aside the conviction.

It cannot, however, be said that at the end of a proper trial Parshu Ram's evidence would not have been accepted. If accepted, it would be quite sufficient to support a conviction. The proper course for this Court, therefore, would be to order a new trial before another Magistrate, in terms of section 300(1) of the Criminal Procedure Code.

I order accordingly.


(G. Mishra)
JUDGE

Suva,

23rd May 1980