

IN THE SUPREME COURT OF FIJI  
Appellate Jurisdiction  
CRIMINAL APPEAL NO. 35 OF 1981

Between:

VOSORI NAICAVACA

APPELLANT

v.

R E G I N A M

RESPONDENT

Appellant in Person.

Mr. M. Raza for the Respondent.

J U D G M E N T

On the 5th day of May, 1981, the appellant pleaded guilty to the offence of assault occasioning actual bodily harm, contrary to section 277 of the Penal Code. He was convicted by the Magistrate's Court Suva and was sentenced to 7 months imprisonment suspended for 2 years. The Magistrate also imposed a fine of \$250 and ordered that \$75 be paid out of the fine to the complainant.

The appellant appeals against conviction and sentence but as he pleaded guilty to the offence and there being nothing defective about the charge, his appeal against conviction cannot be entertained and is accordingly dismissed.

The appellant says that what he said in mitigation to the Magistrate was not correctly interpreted. It is recorded that he said he was earning \$60 a week from farming. He says that he told the Magistrate he earned \$6 a week.

It was only by accident that I discovered on the original Magistrate's Court file when checking to see whether original record showed \$60 or \$6, a letter from the appellant addressed to the Magistrate's Court dated 28th May, 1981, pointing out that he had managed to pay \$100 and seeking an extension of time. A note on the letter indicates he was granted a further 14 days to pay.

The appellant himself made no mention of this payment and Crown Counsel could not have been aware of it.

The facts disclose that the appellant came into a friend's house where the complainant was eating and grabbed the complainant's plate of food. When the complainant stood up and tried to recover the plate the appellant punched him on the face and eyes and when complainant fell on the floor punched him on the face.

The Magistrate when passing sentence stated it was a bad case and that the injuries were serious. The medical report discloses the complainant received no serious injuries. There was bruising and swelling and a small cut above the eyebrow and flattening of the bridge of the nose and other minor injuries consistent with having received one or more blows with a fist. It was a stupid unprovoked attack but not uncommon in Fiji particularly where the offender is under the influence of liquor. There is no evidence that liquor was the cause of this attack but the probability is that it was responsible.

The Magistrate considered that \$75 would adequately compensate the complainant. The appellant has paid \$100 of his fine and the complainant can receive his compensation in full.

The appellant has three previous convictions, all for being drunk and disorderly the last being over four years ago. The Magistrate considered a prison sentence was warranted. While I might not myself have been of

that view if I had been trying the case, since the Magistrate has suspended the sentence I would agree that a term of imprisonment is warranted. However, accepting that a term of imprisonment was warranted, I consider 7 months to be excessive and that 3 months imprisonment in the circumstances coupled with a reduced fine of \$100 is adequate.

The appeal is allowed. The sentence is quashed and in substitution therefor the appellant is sentenced to 3 months imprisonment suspended for 2 years. He is further fined \$100, out of which the sum of \$75 is to be paid to the complainant by way of compensation.

If, as appears from the Magistrate's Court file, the appellant has already paid \$100, that sum is to be applied towards payment of the fine now imposed.

*R.G. Kermode*

(R.G. KERMODE)

J U D G E

S U V A,

17 JULY, 1981.