

Between:

1. ELIKI TABUGASAU
2. SIMIONE TUIVUYA
3. AKUILA TABAIWALU
4. JOSESE MATAWARI

and

REGINAM

Mr. H. Nagin for the 1st Appellant.
2nd, 3rd and 4th Appellants in Person.
Mr. D. Fatiaki for the Respondent.

JUDGMENT

This is an appeal by the appellants against the severity of sentences imposed on them at the Navua Magistrate's Court on 25th March 1981. All four appellants were convicted on their own pleas on seven counts of throwing stones at a number of motor vehicles on 21st March 1981 and were sentenced as follows:

First Appellant - 2½ years' imprisonment on each count to be served concurrently and in addition ordered to pay a fine of \$500 in default nine months consecutive making a total of three years three months of effective prison sentence on his failure to pay the fine.

Second, Third and Fourth Appellants - 2 years' imprisonment on each count to be served concurrently and in addition each was ordered to pay a fine of \$500 and in default nine months making a total of two years nine months of effective sentence on his failure to pay the fine.

The facts which were recorded at the trial are set out hereunder:

"R. Mohammed Aslam is a contractor - contract to cart new cars from Suva to Nadi by Carpenters Group.

On 20.3.81 Aslam arranged a fleet of 16 trucks - 8 were his and 3 of Maharaj Transport and drivers. While they were loading new cars at Mobil Service Station in Walu Bay Accused 1 was there with a crowd of 30 people there. Accused 1 works as driver of another company. The manager of that company for whom Accused 1 works came down and had an argument with Aslam. The accused (Accused 1) who was there was annoyed why not given contract to cart these new vehicles. He then got into 3 ton truck and drove off to Navua about 10 p.m. He went and picked Accused 2, Accused 3 and Accused 4 at Nanukulevu Village in Serua and little after mid-night they returned to Navutulevu junction and waited for convoy to go past.

As in Count 1 vehicle BD277 came uphill and this was owned by Maharaj Transport Company. The four accuseds threw stones at the heavy goods vehicle - it had dent on left door and rear vision mirror broken. Total damage was \$150.

In Count 2 BG230 came uphill - again accuseds (4) threw stones at vehicle - causing dent on bonnet and left trafficator broke. This truck was carrying a new car and front windscreen of that car was broken. Damage to truck was \$300 and to new vehicle \$200.

As for Count 3 - vehicle AM259 - truck of Aslam - accuseds (4) threw stones at it - bonnet dented and similarly on side of truck. Damage caused is \$150. Car on it had front glass broken - damage \$40.

As for Count 4 - BE077 belonged to Maharaj Transport Co. Stones thrown by accuseds (4). Front windscreen broken. Driver received injuries on face on inside lip and bruises. Damage to the vehicle was \$400.

All four trucks stoned at Serua junction. All this happened at 12.30 a.m.

After that the four accuseds moved to another place about 3/4 uphill and Accused 1 parked truck up a road and waited for 2nd convoy to come - they waited for 1 1/2 hours when trucks started to come.

As for Count 5 - stones thrown by accuseds - dent by left front of truck - damage \$50 to truck No. Y73 - truck owned by Aslam. Driver had small cut on the mouth.

As for Count 6 - BG767 truck came - stones thrown by four accuseds - right side rear vision mirror broken - damage \$60.

As for Count 7 - Aslam's truck AA359 then came - accused threw stones at the vehicle. Front windscreen of this truck was broken. Damage to truck was \$250. Saw windscreen

of van carried on it was damaged - \$200 damage.
Driver has bruise on right side of face and chip on
his tooth.

Total damage to the truck was \$1,360 and
to the new cars \$440 and some other small damage."

The first appellant was aged thirty two at the
time of the offences. It is clear that he was the ring leader.
He had got the other three appellants who were all much
younger than him (17,21,22) to throw stones at the trucks
concerned causing damage to the trucks and injuries to the
drivers. First appellant agreed that he was the person
primarily responsible for organising the incident.

At the hearing of the appeal it was conceded for
the respondent that in this case the imposition of fines in
addition to lengthy prison terms was wrong in principle for
two reasons -

- (i) the appellants were obviously unable because
of lack of means to pay the fines; and
- (ii) there was no evidence that the appellants
obtained any profit or financial gain from
their crime.

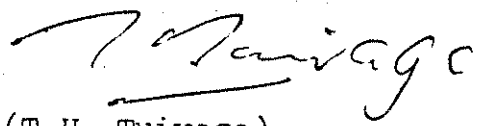
The order made for payment of compensation out of the fines
in the circumstances of this case was clearly an exercise in
futility and served no useful practical purpose. In any event
the complainants still have their civil remedies if they wish
to pursue them later.

The offences committed by the appellants were
serious and because of their prevalence clearly called for a
deterrent sentence. A custodial sentence for each of the
appellant was therefore appropriate. The only question was
the quantum of such sentence. The appellants were all first
offenders who had pleaded guilty. These are mitigating factors
which must be taken into account by the Court in assessing
the length of sentences to be awarded. It is accepted that

the first appellant was the ring leader who was largely to blame for the perpetration of the crime in question. It is proper therefore that he should bear the brunt of the punishment in this case. The other three appellants were all young, one of them, second appellant (Simione Tuivuya) being only seventeen at the time. Their involvement as has been noted was the result of instigation by the first appellant who had apparently offered them liquor to ease the way.

I am satisfied that the sentences imposed on the appellants in the Navua Magistrate's Court could not be allowed to stand. Apart from the mitigating factors present in relation to the appellants, it is to be noted that the maximum sentence prescribed for the crime in question is three years' imprisonment. It is only in exceptional cases and this case is not one of them that a Court would be justified in imposing a maximum sentence or one near to it on a first offender.

I will allow the appeal and set aside the sentences imposed in the Court below and in lieu thereof first appellant is sentenced to two years' imprisonment on each count to be served concurrently and the third and fourth appellants to fifteen months on each count to be served concurrently and the second appellant to twelve months on each count to be served concurrently.


 (T. U. Tuivaga)
Chief Justice

Suva,
 11th September 1981.