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IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
A T L A U T O K A
Appellate Jurisdiction
Criminal Appeal No. 53 of 1982

RECEIVED
17 DEC 1982
SUPREME COURT
REGISTRY

BETWEEN: MATAIASI LALAWA, PENIASI QORO, PENIONA TOGA,
SAMUELA TOGA, ATUNAISA RAVOUVOU &
EREMEASI LEVUIBATIBASAGA Appellants

A N D : R E G I N A M Respondent

Mr. A. M. Koya, Solicitor for Samuela Toga and Atunaisa Ravouvou
Mr. S. C. Maharaj, Counsel for the Respondent

J U D G M E N T

Six accused persons were charged with a series of offences. On count 1 the first four accused - who are the first four appellants were charged with shop-breaking and larceny on 19th December, 1980. On count 2 the same four were charged with robbery with violence on 23rd December, 1980 - which involved assault on a taxi driver causing a fractured wrist and other injuries. On count 3 the same four were charged with taking a vehicle without consent - this related to their taking the taxi after assaulting the driver. On count 4 accused 2 was charged on his own with driving the vehicle, without holding a licence, and on count 5 he was charged with driving whilst uninsured. On count 6 accused 1, accused 3, another accused and appellant accused 5 and one other accused 6 not now before the court, were charged with burglary on 27th April, 1982. And lastly on count 7 accused 5 and accused 6 were charged with another offence of burglary on the same night.

This was clearly a small gang of village youths of various ages from 15-18 years committing offences together. It was only when some of the accused were arrested and questioned in respect of the last two offences that they admitted their involvement, with others in respect of the other counts in 1980. All the accused pleaded guilty before the magistrate and apparently admitted the facts that were put before the court and accused 1 admitted a previous conviction of damaging property, the conviction dating from 7th December, 1981.

For some reason the magistrate decided not to pass separate sentences in respect of each offence, but to pass blanket sentences on each accused. In spite of their youth, he sentenced accused 1, accused 2, accused 3 and accused 4 to five years' imprisonment respectively and accused 5 and accused 6 to three years' imprisonment each. Accused 6 was in fact under 17 years of age and should not have been sent to prison, and his case has been dealt with elsewhere.

Accused 2, accused 4 and accused 5 appealed against their sentences but I have asked for welfare reports on all the accused and those that I do not deal with on appeal I will deal with on review. Clearly the blanket sentences cannot stand and I must consider appropriate sentences in respect of each count.

This was clearly a gang of young thugs who started operating at least in December 1980 with shopbreaking. The most serious offence was the robbery with violence when they attacked a taxi driver, injured and robbed him. At that time the eldest were accused 1 and accused 2 who must have been about 17 years, and the youngest accused 3, and accused 4 about 15-16 years. Had they been caught in 1980 or early 1981, accused 3 and accused 4 could not have been sent to jail, so they are perhaps unfortunate that they were not arrested earlier. But clearly they had not mended their ways because in April 1982 they were burgling houses. Accused 1 and accused 2 were older and seem to have been more acting and responsible for what happened, because accused 1 started the assault on the taxi driver, and because accused 2 later drove the vehicle. They were serious offences, and warrant custodial sentences even taking into consideration the youth of the accused. But a five-year sentence is too harsh in the circumstances. And I say that not because I treat the offences, particularly the attack on the taxi driver lightly, but simply because with youths such as these a five-year sentence at this stage will almost inevitably cast a blight on the rest of their lives, whereas one can hope that after a lighter sentence they will still have a chance to mend their ways, having learned their lesson. I therefore set aside the sentences and substitute the following, bearing in mind that they have already been in custody for about seven months:-

Accused 1 - Count 1 - Six months' imprisonment
 Count 2 - Two years' imprisonment
 Count 3 - Six months' imprisonment
 Count 6 - One year imprisonment

All sentences to run concurrently.

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Accused 2 - Count 1 - Six months' imprisonment
 Count 2 - Two years' imprisonment
 Count 3 - Six months' imprisonment
 Count 4 - One month imprisonment
 Count 5 - One month imprisonment

All sentences to run concurrently.

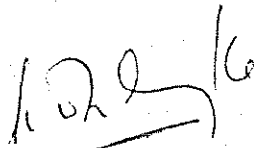
Accused 3 - Count 1 - Six months' imprisonment
 Count 2 - Eighteen months' imprisonment
 Count 3 - Six months' imprisonment
 Count 6 - One year imprisonment

All sentences to run concurrently.

Accused 4 - Count 1 - Six months' imprisonment
 Count 2 - Eighteen months' imprisonment
 Count 3 - Six months' imprisonment
 Count 6 - One year imprisonment

All sentences to run concurrently.

With regard to accused 5 he was not concerned with the robbery with violence, only the last two counts of burglary. He has already spent seven months in jail and in view of his youth I think a suspended sentence is appropriate. I therefore sentence him to one year's imprisonment on each of counts 6 and 7, suspended for two years.



G. O. L. Dyke

Judge

Lautoka,

3rd December, 1932