

Between:

SANAILA RAILAU

and

REGINA

Appellant in Person

Mr. E. Tavaiqia for Respondent

JUDGMENT

On 26th August 1982 in the Suva Magistrate's Court the appellant was convicted after trial on charges of office-breaking, entering and larceny contrary to section 300(a) of the Penal Code and of causing grievous harm contrary to section 227 of the Penal Code and was sentenced respectively to two and five years' imprisonment to be served concurrently.

The appellant is appealing against his conviction and sentence.

With regard to conviction the sole issue is whether the evidence of identification of the appellant was sufficiently reliable to sustain his conviction. The evidence in regard to identity was given by the complainant who claimed to have seen and remembered the face of the appellant when appellant attacked him. He said there was sufficient light about which enabled him to see his face clearly and remember it. According to complainant this enabled him to pick out the appellant from a group of about fourteen to fifteen people in Nina Street eleven days later. When interviewed by the police the appellant gave different accounts as to his whereabouts on the night of the incident, all of which were false. There seemed to be no good reason why appellant should give these false accounts to the police if he was not in fact implicated in the offences concerned.

In these circumstances there is every reason to accept

that the convictions entered against the appellant by the trial Court were sound and properly founded. The appeal against conviction is therefore dismissed.

As regards sentence I feel the term of five years' imprisonment imposed on appellant was too heavy. I do not think sufficient allowance was given to the fact that appellant is a young man of nineteen years and that he is a first offender. Having regard to all the circumstances of this case I think it is right that the sentence should be varied.

The appeal is allowed to the extent that the sentence imposed in the Court below is set aside and in lieu thereof the following is substituted:

1st Count - 2 years' imprisonment
2nd Count - 3½ years' imprisonment
(to be served concurrently)

Chief Justice

Suva,
4th March, 1983.