

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Appellate Jurisdiction

Criminal Appeal No. 6 of 1984

BETWEEN : EPELI BOGIVANATURAGA Appellant
AND : R E G I N A M Respondent

For the Appellant : In Person

For the Respondent: Mr. M. Raza, Principal Legal Officer

J U D G M E N T

The appellant was convicted of robbery with violence by the magistrate's court in Sigatoka and was sentenced to 5 years' imprisonment. He has appealed against sentence.

The appellant has made submissions to the Court pointing out that he is 23 years of age and that he has been in and out of prison since he was 14 years of age. The appellant stated that this particular offence was not premeditated, that he became tempted to rob when the complainant, a taxi driver, produced \$270 in his taxi. Nonetheless, there is the evidence that the appellant produced a knife and when the taxi driver offered resistance, the appellant injured him twice with the knife.

The appellant has some 16 previous convictions; the vast majority of them for dishonesty. He had one previous conviction for assaulting a police officer. The learned trial magistrate observed that the appellant had no prior convictions for other offences of violence and also that he had been in prison since he was 14 years of age. He recorded "I will impose a deterrent sentence but not make it consecutive." Finally he wrote that "I believe a consecutive 5 years' sentence is within the tariff."

In view of the vicious nature of the offence the sentence of 5 years' imprisonment in no way comes to me with a sense of shock as being manifestly excessive; indeed I must say that I consider it to be entirely appropriate. Nonetheless the learned trial magistrate did not take into account that the appellant had pleaded guilty, which I consider amounts to a misdirection by way of omission. The court is therefore at large in the matter of sentence. The appeal is allowed. In view of the fact that the appellant pleaded guilty he is entitled to some measure of leniency.

I have decided therefore to leave the sentence undisturbed but order that it be served concurrently with other sentences which the appellant is serving, to take effect from the date the appellant was arrested, that is, from 12th December, 1983, and I so order.

Delivered In Open Court At Lautoka This 6th Day of April, 1984



(B. P. Cullinan)

Judge