

IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Criminal Appeal No. 65 of 1984

Between:

AMINIASI KOTO

Appellant

- and -

R E G I N A M

Respondent

Appellant in person  
E.V. Tavai for the Respondent

Date of Hearing : 6th November, 1984

Date of Judgment : 6th November, 1984

JUDGMENT OF THE COURT

Casey, J.A. (Orally)

In June 1984 the appellant was convicted in Magistrate's Court at Suva of rape and he was committed to the Supreme Court for sentence because the magistrate felt his sentencing powers were inadequate having regard to the seriousness of the case. A sentence of 8 years' imprisonment was imposed on the 8th August, 1984. He now appeals against conviction and sentence and appears in person. There were three grounds set out in his notice of appeal and in his submissions he put forward two further grounds, and we have given them all our consideration.

The first ground in the notice was that he elected to be tried in the Supreme Court but this was ignored

by the trial magistrate because the complainant was about to leave the country. The record clearly shows that the matters required by the Criminal Procedure Code were put to the accused and he elected trial in the Magistrate's Court. In the absence of any real evidence suggesting that the correct procedure had not been followed or that the record was incorrect we cannot treat this as a proper ground of appeal.

The appellant's second complaint was that although he pleaded not guilty, he was found guilty because he had not challenged the evidence of the prosecution witnesses. However, the record shows that he was given a full opportunity to cross-examine those witnesses and did so; and he also gave evidence himself in which he denied the offence. We find there is no substance in this ground.

The third ground in his notice was an allegation that the magistrate made a habit of glimpsing at his previous conviction and he believed this was a major factor corroborating his conviction. Again, in the absence of any evidence to this effect, we are not prepared to accept that the experienced senior magistrate would conduct himself in this way or allow such information to influence him. Accordingly this ground fails also.

In his submission today the appellant pointed out that the complainant said the incident happened at 11.45a.m. but at that time he was working under the supervision of his superior and did not knock off until midday. However, we note that her only reference to time was an estimate made in reply to a question from him in cross-examination. He also complained about the conduct of a

police officer in bringing him before the complainant for identification instead of holding a formal parade. A reading of Detective Corporal Dattu Ram's evidence shows that he was simply being brought into the building at that stage because it was thought he could help as a witness, and he was not a suspect. The complainant identified him immediately she saw him. There is nothing in these grounds to raise any doubt in our minds about the correctness of the conviction. Indeed, the evidence against the appellant was overwhelming and amply corroborated by independent witnesses. The appeal against conviction is dismissed.

Turning to the appeal against sentence, we share the views about the seriousness of this case expressed by the Magistrate and by the Chief Justice, who imposed the sentence. We note that the appellant had been convicted of rape in 1974 and in all the circumstances we are quite unable to say that the sentence was clearly excessive or wrong in principle. The appeal against sentence is also dismissed.

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 Vice President

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 Judge of Appeal

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 Judge of Appeal