

IN THE FIJI COURT OF APPEAL

CRIMINAL APPEAL NO. 8 OF 1988
(Criminal Case No. 93 of 1987)

BETWEEN

JOVESA VAILEBA

Appellant

- and -

S T A T E

Respondent

Appellant in Person
Ms Aruna Prasad for the Respondent

Date of Hearing: 11 October, 1990
Delivery of Judgment: 12 October, 1990

JUDGMENT OF THE COURT

This is an appeal against conviction and in the alternative against sentence.

The Appellant was charged with "Robbery: Contrary to Section 293(a) of the Penal Code, Cap.17". Strictly it should have been contrary to Section 293(1)(a) of the Penal Code. The particulars of offence read as follows:-

"JOVESA VAILEBA with another, on the 13th day of January, 1987 at Deuba in the Southern Division, being armed with a knife, robbed BHARAT JOGIA s/o BHAGWANJI JOGIA of \$2,000.00 in cash."

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He was convicted as charged and sentenced to 18 months imprisonment by the High Court at Suva on 11 April 1988. At the time of sentence the Appellant was already serving a 7 1/2-year prison term for Highway Robbery. The 18 months sentence was made consecutive to the term he was already serving. The Appellant is therefore still in prison.

With regard to conviction the Appellant's main grounds of appeal may be summarized as follows:-

- (1) The prosecution failed to establish the necessary ingredients of Robbery with Violence.
- (2) That certain discrepancies and conflicts in prosecution evidence were not taken into account by the trial Judge.
- (3) That his prior conviction was made known to the assessors by the prosecution revealing to them that he was serving a sentence of 4 years and 6 months.

re Ingredients of the offence charged

The Appellant contends that he received the sum of \$2,000.00 under false pretences and therefore he should have been charged with that offence and not with robbery.

Robbery is essentially an aggravated form of theft. The conduct or circumstances that will convert an ordinary theft to robbery are prescribed by Section 293 of the Penal Code. In so far as the present appeal is concerned the relevant parts read as follows -

"293-(1) Any person who

- (a) being armed with any offensive weapon or instrument, robs..... any person

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(b)

is guilty of a felony and is liable to imprisonment for life with or without corporal punishment."

The 'particulars of offence' as already quoted are in conformity with the relevant statutory provisions. The Appellant was not charged with 'Robbery with Violence'. In our opinion proof of actual violence was therefore not necessary in this case. It was sufficient to prove that the Appellant was armed with an offensive weapon (in this case a sharp instrument) and that there was a nexus between such weapon and the parting of the property, i.e. the possession of the instrument was not innocent. The Appellant used it to intimidate and instill fear. In our opinion the evidence in the trial clearly showed that the Appellant not only carried an instrument but also applied it to the back of the complainant's neck and demanded that the money be handed over to him. The complainant complied under fear of violence and that in our opinion was sufficient to complete the offence as charged. The fact that there was some evidence of violence does not invalidate the charge. Similarly the fact that the trial Judge directed the assessors that proof of some violence was necessary did not occasion any injustice. Indeed the direction was favourable to the Appellant.

We therefore find no merit in the first ground of appeal as all the necessary ingredients of the offence of Robbery as charged were present in the evidence as presented by the prosecution.

re Discrepancies and conflicts

As regards the discrepancies and conflicts referred to by the Appellant we have examined the trial record and are satisfied that they are not of such a nature as to throw any doubt on guilt of the Appellant. The trial Judge referred to them and the three assessors must have borne them in mind before expressing their unanimous opinion that the Appellant was guilty as charged. This ground must also fail.

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re Revelation of previous convictions

As to the allegation that his previous convictions were revealed to the assessors before they retired to consider their opinion we find that the Appellant is in error. His previous convictions and the fact that he was serving a prison sentence were disclosed to the trial Judge after his conviction which followed expression of opinions by the assessors. There is therefore no merit in this ground also.

The appeal against conviction is therefore dismissed.

As to the appeal against the sentence of 18 months imprisonment all we wish to say is that having regard to the circumstances of the offence, the large sum involved and the antecedents of the Appellant in no way can the punishment imposed be regarded as harsh and excessive.

This appeal is therefore wholly dismissed.

Shahid Gilani

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Justice of Appeal

R. Ahmed

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Justice of Appeal

[Signature]

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Justice of Appeal