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IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 26/91

BEFORE THE HON JUSTICE MICHAEL M HELSHAM
PRESIDENT OF THE FIJI COURT OF APPEAL
AND THE HON JUSTICE SIR PETER QUILLIAM
JUDGE OF APPEAL
AND MR JUSTICE AMET
JUDGE OF APPEAL

MONDAY THE 16TH DAY OF MARCH, 1992 AT 11.00 A.M.

BETWEEN: MALELI KORONIVALU APPELLANT

-and-

S T A T E RESPONDENT

MR MALELI KORONIVALU
MR S. HETTIGE

(Appeared in Person)
FOR THE RESPONDENT

O R D E R

JUSTICE M HELSHAM :

This is an appeal against severity of sentence. The accused was charged with two counts of robbery with violence, the maximum penalty for which is life imprisonment with or without corporal punishment. He was convicted on both counts and sentenced to a total of two years imprisonment.

The offences took place on 28th November and 3rd December, 1988. The trial commenced on 5th March, 1990 and continued on 6th March. The accused gave evidence on oath. The prosecutor commenced his address to the assessors and the hearing was adjourned to 7th March.

The appellant then decamped and did not appear on that day. A bench warrant was issued and the case adjourned, but the accused was unable to be found and there were two further adjournments. Eventually, the case resumed on 30th March, 1990 in his

absence, on which day counsel resumed his final address to the assessors and then the learned Judge summed up. In his summing up, the learned trial Judge gave very careful attention to the reasons for proceeding in the absence of the accused and noted that all the evidence had been given in the accused's presence as required by section 189 of the Criminal Procedure Code. He correctly, in our opinion, allowed the trial to continue.

As mentioned about the accused was convicted on both charges. He was sentenced to 12 months imprisonment on the first charge and two years on the second, the sentences to run concurrently.

The first charge related to the robbery of a gold chain valued at \$270.00 from a lady teacher in the school grounds. Apparently, it was the end of term and there were a number of outsiders about. Coming back from the toilet, which is some distance from the school buildings proper, the teacher was grabbed from behind, her head pulled back by the hair and the chain taken from around her neck, probably ripped off. It was not the accused who did this but he was with two others and it was pursuant to a joint enterprise. The accused admitted to the police that it happened and that he was part of it. They sold the chain to some Indian in Suva.

The second charge related to the robbery from a woman in a street of her purse and the money in it, total value of \$51.00. This was a particularly savage attack by the two accused, an attack in which she was held and assaulted by the person who was in company with the accused. The accused grabbed her purse; she fell or was pushed to the ground and he put his foot on her hand in the process of taking the purse before running away. The persons in the group shared up the money and then threw the purse away according to admissions made by the accused to the police. The woman had fainted during the course of the attack.

In passing sentence the learned trial Judge said:-

"I decide not to take into consideration the previous conviction of the first accused as he is not in court today. In any case he has been only fined before and has never been to prison". (Record p.46)

None of the grounds of appeal have any merit and we have no hesitation in confirming the sentences that were imposed by the learned trial Judge.

The appeal is dismissed.



M. M. Helsham
PRESIDENT
for FIJI COURT OF APPEAL