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IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

CRIMINAL APPEAL NO. 3 OF 1992

(High Court Criminal Case No. 16 of 1991)

BETWEEN:

PENIASI LEE

APPELLANT

-and-

S T A T E

RESPONDENT

Appellant In Person

Mr. Ian Wikramanayake for the Respondent

Date of Hearing : 20th May, 1993

Date of Delivery of Judgment : 20th May, 1993

JUDGMENT OF THE COURT

The appellant was found guilty of the crime of Robbery with violence before the Honourable Mr Justice M. D. Scott after a trial which took place on the 30th September 1991 and 2nd and 3rd October 1991. As the learned Judge found, the assessors were unanimous in their opinions that the accused (and his co-accused) were guilty of Robbery with violence, the apparent conflict recorded on page 21 of the Record going only to the question of whether in the robbery, the accused stole the taxi in addition to the money and the wrist watch.

On 3rd October His Lorship passed sentence, the appellant being sentenced to 10 years imprisonment, his co-accused for 6 years. The desirability of co-accused being similarly treated

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where the facts of the crime allow it, has been often repeated. In the instant case (as the learned Judge's remarks on sentence indicated) there were very good grounds for distinguishing between the two accused.

Shortly the facts involved are that the two accused hired a taxi driver to take them from Nadi to a village some little distance away.

Then followed another shocking attack on the person of an unprotected taxi driver, in the process stealing his watch and his money and making off, in his taxi, compelling the unfortunate man to travel with them whilst the appellant, somewhat affected by drink, drove. The unfortunate results do not concern this Court and are not relevant to our decision.

In sentencing the appellant, the learned Judge said, *inter alia*, to him:-

"You have a disgraceful record

.....

This is your third conviction for robbery with violence in identical circumstances

....

You are a danger to the public. You are sentenced to 10 years imprisonment"

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The other two "identical" offences for which he was sentenced on 7th February 1984 at Sigatoka and 8th May 1987 at Lautoka, earned him 4 years imprisonment and 5 years imprisonment respectively.

It should be emphasised that the offence of Robbery with violence, carries a maximum sentence of imprisonment for life.

In our opinion a sentence of 10 years imprisonment was not excessive.

The appeal will be dismissed.

(Sgd) Mr. Justice Michael M. Helsham  
President Fiji Court of Appeal

(Sgd) Sir Mari Kapi  
Justice of Appeal

(Sgd) Sir Edward Williams  
Justice of Appeal