SAMUEL DONALD NILESHWAR SINGH v STATE (AAU0015 of 2011; AAU0016 of 2011)

COURT OF APPEAL — CRIMINAL JURISDICTION

CALANCHINI AP

13 September, 26 October 2012

Criminal law — sentencing — leave to appeal against sentence — robbery with violence — unlawful use of motor vehicle — whether trial judge erred in sentencing procedure or in term of imprisonment — aggravating factors — degree of violence — victim immobilized — mitigating factors — guilty plea — frivolous and vexatious appeal — Court of Appeal Act s 35(2) — Penal Code ss 292, 293(1)(b).

The appellant was convicted of two counts of robbery with violence and one count of unlawful use of a motor vehicle. The appellant was sentenced to eight years' imprisonment for each of the two counts of robbery with violence, and three months' imprisonment for unlawful use of a motor vehicle.

Held –

(1) Whilst violence is an element of the offence of robbery with violence, the status of the victims and the degree of violence can be regarded as aggravating factors in view of the fact that the starting point selected by the judge was at the lower end of the range. Further, the length of time in which the victim was immobilised by being bound aggravated the offence.

(2) Since the offence was committed while serving a suspended sentence, it was open to the judge to doubt the appellant's remorse and his intention to reform himself.

(3) There was no error in the sentencing procedure or in the term of imprisonment imposed on the appellant.

Appeals dismissed.

Appellant in person.

M D Korovou for the Respondent.

[1] Calanchini AP. On 12 November 2010 in the High Court (action HAC 22 of 2010) the Appellant pleaded guilty to one count of robbery with violence under s 293(1)(b) of the Penal Code Cap 17 (the first conviction). On the same day in action HAC 35 of 2010 the Appellant pleaded guilty to one count of robbery with violence under s 293(1)(b) and one count of unlawful use of a motor vehicle under s 292 of the Penal Code (the second convictions). The Appellant was convicted on all counts.

[2] In respect of a conviction under s 293(1)(b) the maximum penalty that can be imposed is life imprisonment. On 24 November 2010 the Appellant was sentenced in respect of both convictions. In respect of the first conviction the Appellant was sentenced to eight years imprisonment and in respect of the second convictions the sentence was again eight years imprisonment. The Appellant committed the offences whilst undergoing a suspended sentence. In respect of the sentences imposed on 24 November 2010 the learned Judge decided that the Appellant should not be eligible for parole until he has served the term of eight years imprisonment. The sentence in respect of unlawful use of a motor vehicle was three months imprisonment to be served concurrently with the sentence for robbery with violence. All sentences were to be deemed to commence from 12 November 2010.

[3] The Appellant filed two applications for leave to appeal against sentence on 23 February 2011. The applications were filed out of time. The Appellant has applied for leave to appeal out of time. The appeal papers were filed about two months late. Taking into account that the Appellant is acting for himself and the fact that the Respondent has not identified any prejudice nor any opposition to the application, I propose to allow the Appellant an extension of time to 23 February 2011.

[4] The admitted facts relating to the first conviction may be stated briefly. The Appellant with two others went to the house of Imran Ali at about 9.30pm on 26 October 2010. Imran Ali was not home. The Appellant and the two others were admitted into the house by Ms Ronika Karan, the wife of Imran Ali. The Appellant was known to both Imran Ali and his wife. Also in the house at the time was the couple's child (a son). One of the group held a chopper at the neck of the wife whilst the Appellant asked the whereabouts of her husband. She was taken forcefully to the bedroom. Demands were made for money and jewellery. Ms Ronika Karan was punched by one of the offenders on her forehead. The wife revealed where her valuables were kept. The house was ransacked and Ms Karan assaulted. During the course of the robbery cash, jewellery, mobile phones, sunglasses, digital cameras, ipods, MP.3 players and a carry bag with a total assessed value of $21,730.00 were taken. At some time during the course of the robbery adhesive tape was placed across Ms Karan's mouth and her hands tied behind her back. The Appellant and the others fled the house when Imran Ali returned home.

[5] The admitted facts relating to the second convictions may also be stated briefly. The Appellant with three others hired a seven seater passenger carrier van to go to Saweni beach. Upon arrival at the beach one of the Appellant's group threatened the complainant driver with a knife and forced him from the driver's seat and into the back of the van. The vehicle was then driven around. During the journey the complainant was forced to hand over $95.00 in cash and two mobile phones valued at $200.00. The complainant was dropped off at Saweni and the vehicle subsequently abandoned in Lautoka. In the meantime the vehicle was stripped of its accessories being a car stereo, amplifier and mobile phone charger with a total assessed value of $350.00.

[6] The amended grounds of appeal were filed on 20 August 2012. The grounds are essentially concerned with the sentencing process adopted by the learned trial judge in arriving at a term of imprisonment of eight years. Having read the two sentencing decisions I am of the view that this appeal is clearly vexatious and frivolous.

[7] So far as the first conviction is concerned, there is ample authority in this jurisdiction for concluding that the appropriate tariff for robbery with violence is now 10 to 16 years imprisonment. In selecting 10 years as a starting point the learned judge has started at the lower end of the range.

[8] In adding four years for aggravating factors, the learned judge has been more than fair. This offence took place in a family home. It was committed after one of the victims had invited the Appellant and his co-offenders into the home. The victims were a defenceless woman and a young child. Whilst violence may be an element of the offence, the status of the victims and the degree of violence can be regarded as aggravating factors in view of the fact that the starting point

selected by the learned Judge was at the lower end of the range. Furthermore, the length of time over which the victim was immobilised by having been bound aggravated the offence.

[9] In respect of mitigation, quite clearly the learned judge could not conclude that the Appellant was of good character. In view of the fact that the offence was committed whilst serving a suspended sentence it was open to the learned judge to doubt the Appellant's remorse and his intention to reform himself. There was very little if anything that could lead to a reduction by way of mitigation.

[10] As for the early plea of guilty, the learned Judge reduced the sentence by five years which in my view is more than reasonable. He allowed a further one year reduction for the period of seven months spent on remand.

[11] In respect of the second convictions, the learned trial judge has taken a similar approach. For essentially the same reasons I can find no error in the sentencing procedure nor in the term of imprisonment imposed on the Appellant.

[12] For all of the above reasons I have concluded that both appeals are frivolous and vexatious. They also have no prospect of success and are therefore dismissed under s 35(2) of the Court of Appeal Act Cap 12.

Appeals dismissed.