

IN THE SUPREME COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 8 of 1978

BETWEEN:

ABDUL SAFIQ s/o Raj Mohammed

Appellant

- and -

REGINAM

Respondent

Mr. J.R. Singh, Counsel for the Appellant  
Mr. D. Williams, Counsel for the Respondent

JUDGMENT

The appellant was one of 3 accuseds charged with cattle stealing. Only the appellant was convicted. He was accused 3.

Ground one of the appeal complains that the appellant was not positively identified in Court. However the record shows he was referred to by the witnesses as accused 3, and by name. They all gave unsworn statements and the learned magistrate properly recorded the statements under the name of each accused as well as by his position in the dock. This ground is quite insupportable.

Ground two alleges that the learned magistrate erred in accepting the uncorroborated identification of the appellant by P.W.1, the complainant. The latter said that he had known all three accuseds for a long time, in fact from childhood and that they were neighbours. Thus this was not a matter of identification but of recognition. He said that he saw them in his compound by the light of his torch which he shone through a louvered window. Having been disturbed by the barking of his dogs he had opened the door but was stoned and had to close it.

Then he went to the window and shone his torch which had new batteries and gave a good light. He described the position of each of the accused who at that time were grouped together and about 10 yds. away. He gave the alarm by calling thieves and then dodged below the window level, no doubt because of the stones. When he again looked through the window and again shone his torch he saw accuseds 2 & 3 on his (complainant's) horse and accused 1, was leading away a calf. To my mind that description of the intruders' movements coupled with a distinct reference to each accused personally indicated a competent recognition of each accused if the witnesses were credible. P.W.1 and his brother armed themselves and ran outside whereupon accused 1 released the calf and mounted his own horse whilst accuseds 2 & 3 galloped away on the P.W.1's horse. Once again P.W.1 gave an account of the separate movements of each accused which would be difficult to recollect unless he recognised them. He was not looking for the first time and in the light of a torch at strangers when he had never seen before. He was not comparing accused persons in the dock with the recollection of some image he had forced some months before hand. He saw three men that night whom he claimed to have known from childhood. He would not have to describe the intruders to the police but simply tell the police who the intruders were.

P.W.2, complainant's brother who lives in the same house said that he saw three intruders in the light of the torch but he did not recognise them. The appellant argues that this makes P.W.1's credibility suspect because P.W.2 had the same opportunity as P.W.1 and if he failed to recognise the accuseds or any of them it is doubtful that P.W.1 should have been able to do so.

However, the combined evidence of P.W's 1&2 shows that P.W.2 did not have the same opportunity of recognising the intruders as P.W.1. The latter had shone the torch through the window at the culprits when they were only 10 yds. away and he had already recognised them before his cries of alarm brought P.W.2 to his side. Then P.W.1 dodged below the window and kept giving the alarm of "thief" or "thieves". When he looked up and shone his

3.

torch again it is clear that his cries of alarm had had some effect and the thieves were not in the same position. two were already on horseback and accused 1 was getting on to his horse which was tethered some distance away. It was in these latter circumstances that P.W.2 saw the culprits in the light of a torch which was being directed not by himself but by P.W.1. In my view it is not surprising that in these circumstances P.W.2 did not recognise any of the culprits and that P.W.1 claimed to have recognised them all.

Corroboration is not required of witness who recognises the culprit as a person whom he knows very well.

Ground 2 fails.

Ground 3 alleges that P.W.'s 1 & 2 contradicted each other in material particulars. The instances quoted by the appellant can scarcely deserve the term contradictions and do not amount in any way to material contradictions.

Ground 4 is that the learned magistrate failed to direct himself that the prosecution must prove its case beyond reasonable doubt. It is to be regretted that appellants persist in putting forward this ground. It is not necessary for the magistrate to record that he so directed himself. His judgment is not a summing-up instructing persons who are ignorant of the law of the way in which to approach and analyse the evidence. He is aware of the law. It is from his judgment in which he analyses the evidence and states his findings thereon that one may ascertain whether or not he has followed the law. There is nothing in the learned magistrate's judgment which suggests that he did not have in mind the standard of proof required for maintaining a conviction. Ground 4 does not, as worded, constitute a ground of appeal.

Ground 5 alleges that the appellant's conviction cannot be supported on the evidence. Some of the arguments put forward on this ground I have dealt with (supra).

There is nothing in the judgment which suggests that the magistrate was influenced by the fact that a week before hand he had convicted the appellant for cattle stealing and there was no ground for the appellant to argue that this might be so.

4.

The learned magistrate said he was not satisfied that P.W.1's recognition of accuseds 1 & 2 could be relied upon because P.W.1 was viewing 3 persons in the light of one torch and would probably concentrate on only one of them. On the contrary P.W.1 described the position of each accused on each occasion that he flashed his torch and indicated his recognition of each one and described what each accused was doing on each occasion. He called out the name of Accused 3, Shafique, which P.W.2 heard and the magistrate regarded this as showing that P.W.1 recognised the accused 3.

It is argued by the appellant that if the magistrate was dubious about P.W.1's recognition of accuseds 1 & 2 then he should have similar doubts about the recognition of accused 3.

The magistrate's reasoning is somewhat difficult to follow in view of P.W.1's positive evidence that he recognised not only accused 3 but accuseds 1 & 2, and his ability to describe their separate movements and of their modes of departure on horse-back. The magistrate did not doubt P.W.1's veracity in any way. In my view the magistrate was justified in accepting P.W.1's recognition of accused 3 and I think accuseds 1 & 2 were very fortunate that the magistrate professed doubt regarding the accuracy of their recognition by P.W.1.

The appeal against conviction is dismissed.

The Crown have contended that the sentence of 2 years is too low having regard to the accused's antecedents. However, it is being served consecutively to a term of 16 months, also for cattle stealing. I think that 3 years and 4 months for the two offences is sufficiently appropriate.

(Sgd.) J.T. Williams  
JUDGE

LAUTOKA,  
14th April, 1978.

Messrs. Sharma, Singh & Co., for the Appellant  
Director of Public Prosecutions for the  
Respondent.

Date of Hearing: 30th March, 1978.