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IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Labasa Criminal Appeal No. 20 of 1978

SUBHASH CHAND  
s/o Deo Karan

Appellant

v.

REGINAM

Respondent

Appellant in person  
Mr. T. Fong for the Respondent

JUDGMENT

Appellant was convicted by the Magistrate's Court Labasa of larceny and sentenced to 18 months' imprisonment.

He appeals against his conviction and sentence.

His grounds taken together allege that the learned Magistrate erred in accepting the evidence of identity as being sufficient to support his conviction.

Appellant had been seen running with two others near a house. Someone had called out and one Abdul Khan, a passerby, had tried to stop the men. He managed to get close to the appellant, about five yards away, and recognised him. He called out his name and the appellant who was carrying a bag threw it to the ground, jumped into a drain and disappeared. Inside the bag were \$15 worth of freshly picked vegetables.

Appellant denied being in the vicinity at any time that night.

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The learned Magistrate said -

" I have carefully considered all these points. I agree with Counsel's submissions on the questions and danger of uncorroborated identification at night.

But I have no hesitation in accepting PW2's evidence that it was Accused whom he saw that night carrying the sack containing the stolen vegetables. There was bright moon-light. They were face to face, about 5 yards apart and PW2 actually recognized Accused and called his name."

I cannot see any error in the assessment made by the learned Magistrate of the evidence before him.

The appeal against conviction is dismissed.

The sentence, at first sight, does appear a little harsh but this offence was in the nature of a planned raid by a party on a man's farm by night. The appellant also has three previous convictions for larceny. This, in my view, justifies the sentence imposed.

The appeal against sentence is, therefore, also dismissed.

  
(G. Mishra)  
JUDGE

Suva,

6th October 1978