

Between:

SURESH LAL s/o JAG LAL

Appellant

and

REGINAM

Respondent

Mr. H.M. Patel for the Appellant

Mr. M. Raza for the Respondent

JUDGMENT

On 13th February 1980 at Suva Magistrate's Court the appellant was after trial convicted of assault occasioning actual bodily harm and was sentenced to eighteen months' imprisonment.

On 20th February 1980 following an application on behalf of the appellant he was placed on bail pending appeal.

Appellant now appeals against both his conviction and sentence.

The facts as found by the learned Magistrate were as follows.

On 4th January 1980 the complainant, Navin Prasad, was driving his taxi along Brown Street. There were several passengers in the taxi. Driving a private car the appellant drove past Prasad and then slowed down in front of the taxi. As he neared the junction with Rewa Street appellant sped up and then suddenly applied his brakes, pulled to the left and stopped and beckoned Prasad over to him. When Prasad remonstrated with appellant about the way he was driving appellant slapped him in the face. Appellant's brother-in-law who was in the car joined in and was punched by Prasad.

Appellant then lunged at Prasad's chest with a penknife but Prasad raised his left hand to protect himself and as he did so he received a stab wound to the back of his hand. The Fijian passengers from the taxi stepped in and stopped the fight. The police arrived soon after and arrested appellant. ~~Appellant's~~ ^{complaint} wound bled freely at the time and was treated with antibiotics at the C.W.M. Hospital. Despite this it swelled up to the extent that he was off work for two weeks.

The doctor did not measure the wound received by Prasad as he thought it was not deep. He was apparently going by the fact that the opening to the wound was very slight.

There are two grounds of appeal against conviction namely:

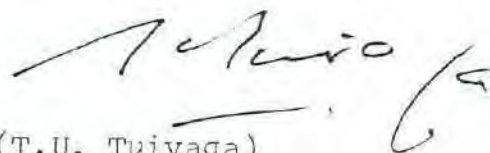
- (1) That learned Magistrate failed to take into account the inconsistencies in the prosecution evidence in reaching his verdict.
- (2) That the learned Magistrate did not properly evaluate the evidence given on behalf of the defence.

With regard to Count 1 I can find no material inconsistencies in the evidence given by the prosecution witnesses as to support this ground of appeal. I am satisfied that the learned Magistrate's judgment cannot be impugned on that ground. Nor, in my opinion, could it be said with regard to Count 2 that the learned Magistrate did not properly evaluate the evidence of the defence witnesses. The issues in this case are clearly one of credibility of the witnesses. The learned Magistrate had the distinct advantage of hearing the witnesses in the witness box and observing their demeanour. That advantage is not available to this Court and accordingly this Court will hesitate to differ from the learned Magistrate's assessment on credibility unless there are strong grounds to do so.

In the result the appeal against conviction is dismissed.

As regards the appeal against sentence the appellant is twenty one years of age with no previous convictions. Although the injury sustained by Prasad was relatively minor he was nevertheless at danger of being seriously wounded by the appellant who was armed with a penknife. There is apparently a history of bad feeling between Prasad and appellant arising out of Prasad's former association with appellant's sister who is now married to Surendra Narayan Singh (D.W.2). In these circumstances I feel that a suspended sentence and a fine would best serve the ends of justice in this case. At any rate it would tend to ensure that appellant stays out of trouble for a long time.

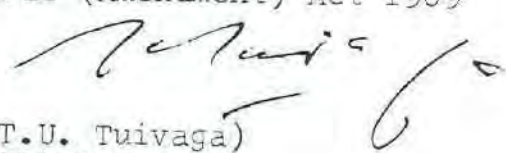
Accordingly I would set aside the sentence of eighteen months' imprisonment imposed in the Court below and substitute therefor a sentence of twelve months' imprisonment suspended for two years. In addition appellant is fined \$80 or three months' imprisonment.



(T.U. Tuivaga)
Chief Justice

Suva,
4th July 1980.

Section 28A(4) of the Penal Code (Amendment) Act 1969
complied with.



(T.U. Tuivaga)
Chief Justice