

Appellate Jurisdiction

Criminal Appeal No. 10 of 1982

000347

Between:

TOMASI QILIA

and

REGINAM

Appellant in Person

Mr. S. Kepa, Director of Public  
Prosecutions, for Respondent

JUDGMENT

Appellant and two others (Taito Raikadravo and Aseri Batiratu who were recently the subject of a separate appeal (see Criminal Appeal No. 67 of 1981) were charged in the Suva Magistrate's Court on two counts of robbery contrary to section 293(1)(b) of the Penal Code and as to which appellant pleaded guilty, on the first count but not guilty on the second count. The victim of robbery in the first count was Latchman Singh s/o Dor Sami. Following his trial on the second count appellant was found guilty and was sentenced to three years' imprisonment on each count to be served consecutively making a total of six years' imprisonment.

Appellant is appealing against his conviction on the second count as well as against sentence.

As regards his appeal against conviction on second count appellant contended that it was wrong for the trial Court to convict him thereon as he was not directly involved with the assault on Mohammed Ashik s/o Mohammed Yusuf.

As regards his appeal against sentence appellant claimed that it was harsh and manifestly excessive.

The facts of the case have already been noted when dealing with appellant's co-accused in Criminal Appeal No. 67 of 1981. It is clear from the facts of the case that it was the appellant who alone inflicted the rather serious injuries sustained by Latchman Singh. The incident occurred at the same time when his two co-accused were assaulting Mohammed Ashik and robbed him of \$40 in cash. Thus as far as the appeal against conviction is concerned, this was clearly a case of a joint enterprise as to bring the case within the provisions of section 21(b) and (c) of the Penal Code. In these circumstances appellant was correctly found to be equally culpable for the commission of this offence in the second count for which his two co-accused were directly responsible. There is ample evidence that all three accused acted in concert when they robbed the two bus drivers.

In the result I find no merit in the appeal against conviction which must be dismissed.

With regard to the appeal against sentence, it is clear as I have pointed out in the earlier appeal that on principle it was wrong in view of the particular circumstances of the case to make the sentences consecutive in effect. As already noted Latchman Singh was fairly badly injured as a result of the assault on him by the appellant. This factor must diminish to some extent the mitigating value of appellant's plea of guilty on the first count. This will be reflected in his sentence as compared with what his co-accused had received. The appeal against sentence is allowed. The sentences imposed in the Magistrate's Court are set aside and in their place I order the following -

1st count	..	4 years' imprisonment
2nd count	..	2 years' imprisonment

to be served concurrently.

(T.U. Tuivaga)  
Chief Justice

Suva,  
19th March 1982.