IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 69 of 1983

Between:

PONIPATE DRAUNIMASI — Appellant

and

R E G I N A M — Respondent

Appellant - In person
Mr. J. Sabharwal for the Respondent

Date of Hearing: 7th March, 1984

Delivery of Judgment:

JUDGMENT OF THE COURT

Mishra, J.A.

The appellant was convicted by the Supreme Court Lautoka of rape after two of the three assessors advised the learned judge that he was guilty. The third assessor found him not guilty.

The appellant was sentenced to 5 years' imprisonment and ordered to receive 10 strokes.

He appeals against his conviction and sentence.

His grounds, fourteen in all, are in a laymen's language but the submissions made by him would appear to allege that -

(a) the learned judge exercised his discretion wrongly in refusing his application for an adjournment to enable him to engage counsel;

(b) the learned judge failed to put the defence case adequately to the assessors;

(c) there was no corroboration of the complainant's evidence.

As for his sentence he says that, in the circumstances of the case, it is manifestly excessive.

The matter referred to in (a) above arose in this way. About a month before the trial the appellant was told by his counsel that owing to differences between them, presumably as to the conduct of the case, counsel would not be able to represent him. The appellant, who was on bail, made no effort to engage other counsel. At the trial his counsel applied for leave to withdraw and was released without objection from the appellant whose consent to such release would normally be necessary. Under the circumstances the learned judge was, in our view, correct in considering the appellant's request for more time to obtain legal representation as unjustified.

As for learned judge's treatment of the evidence we do not find any short-comings in the Summing-Up. The prosecution evidence briefly was that the appellant had forcibly taken the complainant from a dance hall to a carrier parked nearby and had asked the driver to drive to an isolated place outside the town where he had forced her to have sexual intercourse

with him. Several witnesses, including the driver of the carrier, gave evidence of what they had heard and seen confirming that she had been taken away by force and apparently against her will. The learned judge, in his summing-up, reviewed this evidence in considerable detail drawing particular attention to matters requiring careful consideration.

The appellant, in his evidence, admitted sexual intercourse but denied lack of consent. The complainant, said he, had herself suggested sexual intercourse because she wanted money to purchase a pair of socks and that she was annoyed when the money she received was less than she had expected. He also called four witnesses to support his claim that she had gone willingly with him.

The learned judge, before dealing with the defence case reminded the assessors that the appellant was unrepresented, a feature that required special care in dealing with the evidence given by him and his witnesses. He then reviewed that evidence in considerable detail emphasizing to them that -

> "It is sufficent for his purposes if he and his witnesses raise a reasonable doubt in your minds as to any element of the charge. "

We consider his directions, in this respect, quite adequate.

On the issue of corroboration we accept the respondent's submission that the learned judge explained to the assessors in clear and simple language what was required and that he also pointed out to him items of evidence which were capable of amounting to corroboration. The directions on the issue were in our view, full and correct.

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The appellant alleged before this court that the complainant and other prosecution witnesses had told deliberate lies to assist the police in fabricating a case against him. We can find no evidence of that in the record and the issue of credibility of witnesses was, quite correctly, left to the assessors with adequate directions.

There is no substance in any of the grounds put forward by the appellant and the appeal against conviction is consequently dismissed.

As for the sentence the appellant has a bad record and this is his second offence of this nature. He is thirty-four years of age.

We cannot, therefore, find any reason for considering the sentence manifestly excessive.

The appeal against sentence is also dismissed.

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Judge of Appeal

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Judge of Appeal

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Judge of Appeal