

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 14 of 1984

Between:

TULSI RAM
s/o Ganga Ram

Appellant

and

REGINAM

Respondent

Appellant In Person

Mr. E. Tavai for the Respondent

Date of Hearing: 13th November, 1984

Delivery of Judgment: 15th Nov., 1984

JUDGMENT OF THE COURT

Mishra, J.A.

The appellant was convicted by the Supreme Court, Suva, of conspiracy to commit a felony and sentenced to imprisonment for 18 months.

On 9th January, 1983, the appellant acquired a rental car and drove some youths, staying at the place where he was, to a house in Pathik Crescent, Tamavua. This much was not in dispute. The prosecution alleged that the appellant had, with these men, planned to break into that house and steal and had driven them there intending that they should execute that plan. Reliance was placed largely on the evidence of two of these youths both called Manoj Kumar (Mark 1) and (Mark 2). Mark 1 who admitted his own involvement testified that the

appellant was the ringleader of the group and had planned the commission of the offence. Mark 2 also admitted participating in the offence but could not recall any discussion with the appellant concerning the offence prior to being dropped at Pathik Crescent.

The appellant appearing in person appeals against his conviction on the sole ground that the Chief Justice's treatment of these accomplices' evidence was erroneous and inadequate. The Chief Justice directed the assessors to treat the two Marks as accomplices and told them to scrutinise their evidence, particularly that of Mark 1, very carefully.

The appellant was represented by counsel at the trial.

On corroboration the Chief Justice said :-

"Now the law requires when we are dealing with an accomplice or more than one accomplice for me to warn you that it is dangerous to act on the evidence of accomplices - that is dangerous to act on the evidence of accomplices without corroboration. Corroboration is evidence coming from an independent source tending to implicate the accused with the commission of the offence. In this case the prosecution had rightly conceded that there was no corroboration available for consideration. So what you have to do therefore is to ask yourself very carefully whether despite the lack of corroboration, was Manoj Kumar (Mark 1) essentially telling the truth in this Court, that an agreement had been reached and inspired by the accused to carry out the break in at 9 Pathik Crescent, Tamavua. If you think and this is a matter entirely for you that he was a persuasive and reliable witness on the matter, then you are entitled to act on his evidence. "

The assessors, having receiving this warning as to danger, nevertheless found the appellant guilty.

The appellant's submission, therefore, cannot succeed.

As for sentence the Chief Justice said :-

" There is no question in this case that the accused was the main actor in the conspiracy and I have no doubt that he was the master-mind behind it. "

The other participants, much younger than the appellant, had been sentenced to 15 months' imprisonment each. We do not therefore, see any reason for disturbing the sentence imposed on the appellant.

The appeal, both against conviction and sentence, is dismissed.

J. D. S. K.
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JUDGE OF APPEAL

Singh
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JUDGE OF APPEAL

M. B. Casey
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JUDGE OF APPEAL