

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 3/06
(High Court Criminal Appeal HAA 114/05L)

BETWEEN:



JOSEVATA TORA

Appellant

AND:

THE STATE

Respondent

Coram: Scott J.A.

Date of Decision: 6 February 2006

DECISION

- [1] On 21 April 2005 the Appellant appeared in the Ba Magistrates' Court charged with one count of attempted rape, contrary to Section 151 of the Penal Code (Cap. 17) and one count of robbery with violence contrary to Section 293 (1) (b) of the Code.
- [2] The brief facts were that the Appellant entered the house of a 59 year old woman at night time. He violently assaulted her, inflicting multiple facial injuries upon her including a broken jaw. He attempted to rape her. He then stole a number of items from her and left the house.

- [3] The offence of attempted rape carries a maximum sentence of 7 years imprisonment, while robbery with violence is punishable in the Magistrates' Court with a maximum of 10 years imprisonment and in the High Court with imprisonment for life. It is an "electable offence".
- [4] The Resident Magistrate pointed out to the Appellant that he had right to have one of the offences with which he had been charged tried in the High Court (see Electable Offences Decree 22/1998). She also advised him that he had the right to be represented by counsel. According to the record, the Appellant chose to be tried in the Magistrates' Court and to represent himself.
- [5] The Appellant, who was a married 24 year old first offender who worked on his father's sugar cane farm pleaded guilty to both counts. He accepted the summary of facts and was convicted as charged.
- [6] After considering the Appellant's mitigation the Resident Magistrate sentenced him to 9 months immediate imprisonment on each count, the sentences to be served concurrently.
- [7] On 19 May 2005 the Director the Public Prosecutions appealed against the leniency of the sentences imposed. The appeal was heard by the High Court at Lautoka (Connors J) on 2 December 2005 and judgment was delivered the same day. After citing two local High Court authorities in which the tariff for home invasion had been considered, he allowed the appeal in respect of the sentence imposed for the robbery with violence, increased the sentence on that count to 6 years imprisonment and confirmed the sentence imposed for the attempted rape.
- [8] The Appellant has now filed a petition of appeal in which he seeks to appeal both against the conviction and against the sentence imposed on him by the High Court.

- [9] Under the provisions of Section 309 (1) of the Criminal Procedure Code (Cap. 21) there is no right of appeal to the High Court against a conviction entered in a Magistrates' Court following a plea of guilty. The only exceptions to this provision arise when there has been some procedural defect such as an equivocal plea. There is nothing in the record to suggest any procedural shortcomings in the Magistrates' Court and therefore the Appellant had no right of appeal against his conviction to the High Court. It follows that he has no right of appeal against his conviction to this court either.
- [10] Under the provisions of Section 22 (1A) of the Court of Appeal Act (Cap. 12) no appeal lies against a sentence imposed by the High Court in its appellate jurisdiction unless (a) the appeal is on the ground that the sentence imposed by the High Court was unlawful or passed in consequence of an error of law or (b) the High Court imposed an immediate sentence of imprisonment in lieu of a non custodial sentence imposed by the Magistrates' Court.
- [11] Section 22 (1A) applies whether or not the High Court enhanced the sentence imposed by the Magistrates' Court.
- [12] In his petition of appeal the Appellant suggests that the High Court took irrelevant matters into consideration in arriving at the sentence which it imposed and that the sentence was wrong in principle and manifestly excessive.
- [13] As appears from the record, the High Court carefully analysed both the mitigating and the aggravating factors of the case before arriving at its decision to enhance the sentence to six years imprisonment. Given the maximum sentences available, the gravity of the offences and the severe distress suffered by the complainant it is plain both that the overall sentence imposed in the Magistrates' Court was manifestly lenient and that the sentence imposed in the High Court was richly deserved.

[14] I am satisfied that no questions of law have been advanced by the Appellant in support of his appeal and accordingly no appeal against the sentence imposed upon him by the High Court lies.

[15] Under the provisions of Section 35 (2) of the Court of Appeal Act, the appeal is dismissed.



A handwritten signature in black ink, appearing to read "M.D. Scott".

M.D. Scott
Resident Justice of Appeal