

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAU0066 OF 2007

BETWEEN : AZIM KHAN *Applicant/Appellant*

AND : THE STATE *Respondent*

BEFORE THE HONOURABLE JUDGE OF APPEAL MR JUSTICE
JOHN E. BYRNE

Counsel : Appellant - In Person
: Mr P. Bulamainaivalu for the Respondent

Date of Hearing &
Ruling : 21st January 2008

R U L I N G

[1] The Applicant seeks leave to appeal out of time against a Judgment of Govind J. in the High Court at Lautoka on the 18th of July 2006 on appeal from the Magistrates' Court. On the 10th of March 2006 in the Lautoka Magistrates' Court the Applicant and another, Imtiaz Khan pleaded guilty to '***Robbery With Violence and Unlawful Use of a Motor Vehicle***'. They were each sentenced to 7 years and 6 months imprisonment to be served concurrently. They

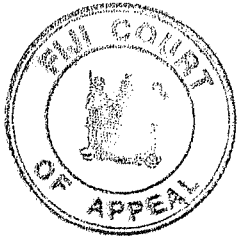
had followed the victims of their attack from Saweni Beach to Lomolomo Beach, where by frightening the complainants with broken beer bottles and a knife with three others succeeded in stealing a number of items of which all except items to the value of \$637.00 were recovered. The Applicant is now aged 21 and was educated to Class 6. He submitted to Govind J. that he acted under peer-pressure and that his parents had separated.

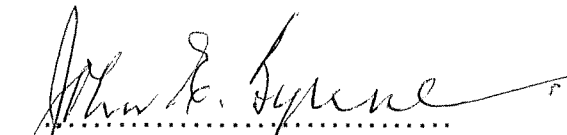
- [2] The facts were that the first Applicant Azim Khan and his companion Imtiaz Khan followed their victims from Saweni Beach to Lomolomo Beach, where by frightening their victims with broken beer bottles and a knife, the Appellant and his companion with three others succeeded in stealing a number of items of which all except goods to the value of \$637.00 were recovered.
- [3] The Applicant said that he acted under peer-pressure, that he is only 19 years old and that his parents had separated. He told Govind J. that having served 4 months already he had learnt his lesson and wanted to become a good citizen but the Judge said that this did not hold much water as he committed the present offence not long after coming after out of prison after a 2 years' sentence for ***'Robbery With Violence'***.

- [4] It appears that the current tariff for '**Robbery With Violence**' is from 4 to 7 years although a higher starting point could be chosen. In this case Govind J. made the starting point 5½ years to which he added 2 years for the pre-planning, the use of weapons, the fact that one of the victims was 65 years old and it was done in company, making the total 7½ years. From this the Judge deducted 1½ years for the plea of guilty, for the fact that no injuries were inflicted and that all but goods to the value of \$637.00 were recovered.
- [5] He therefore varied the sentence of the Appellant on count one from 7 years to 6 years and did not alter the sentence of six months for '**Unlawful Use of a Motor Vehicle**'. He held that both sentences should be concurrent.
- [6] I am of the opinion that there is no error in the reasoning of Mr Justice Govind and that he committed no error in law in dealing with the Appellant as he did.
- [7] The Appellant is now aged 21 and was educated to Class 6. He will still be a comparatively young man when he finishes his prison term. Perhaps with counselling and

some help in finding employment he may yet change his ways. In his own interests he should try to do so.

[8] The Application for *Leave to Appeal* is refused for the reasons I have given above.




[John E. Byrne]
JUDGE OF APPEAL

At Suva

21st January 2008