JOSAIA VUNITALI

A

v.

REGINAM

(SUPREME COURT—1979: Grant, C. J. 30th March)

Appellate Jurisdiction

B

Criminal Law—conviction—disputed confessions—no voir dire—conviction supportable by other evidence.

On 1st July, 1978 appellant was convicted of Robbery with Violence, contrary to the Penal Code, S.326. There was an appeal against conviction and sentence. The Magistrate accepted the prosecution evidence as he was entitled to do. The learned Judge of appeal considered that subject to one matter to be referred to below the Judge of appeal was without merit. The appellant also claimed the sentence was excessive. A record of interview was produced which included incriminating material. However the accused claimed he had been assaulted by the police and forced to make admissions in this record. The learned Judge noted that once such an allegation was made; it was necessary for the Magistrate to hold "a trial within a trial" to determine the admissibility of the Record. The Magistrate did not do this. Had the conviction depended upon the material in the record it could not stand.

C

D

Held: Leaving out the record of interview there was ample evidence on which the conviction was supported. No reasonable Tribunal could have failed to convict the appellant on the rest of the evidence.

E

The sentence erred on the side of leniency.

Appeal dismissed.

Cases referred to:

F

R. v. Stirland (1944) 30 Cr. App. R. 40.
R. v. Haddy (1944) 29 Cr. App. R. 182

GRANT, C. J.:

G

Judgment

On the 18th July 1978 at Suva Magistrates Court the appellant was convicted after trial of robbery with violence contrary to section 326(1)*(a)* of the Penal Code and was sentenced to two years' imprisonment.

H

The appellant has appealed against conviction on the grounds that he was falsely accused, and has appealed against severity of sentence.

A The prosecution evidence established that at 8 p.m. on the 30th June 1978 the complainant (P.W.1), a newspaper photographer, while on his way home was stoped by the appellant and two others who were blocking a small bridge off Namena Road. It was a moonlit night and the complainant could see the appellant clearly. The appellant, who smelled of drink, threatened the complainant with a broken beer bottle, demanded money from him, and took $1 out of his pocket, while one of the others snatched the complainant's cap from his hand and threw a punch at him. The complainant jumped from the bridge and the appellant and his com-
B panions ran off. The complainant then went to Samabula Police Station and reported the incident.

Before the police arrived at the scene an electrician (P.W.2) who also had to cross the bridge in order to go home was stopped shortly beyond the bridge by the appellant and two others who demanded money from him. He told them he had no money whereupon the appellant, who was well known to the electrician, grabbed
C hold of his back pocket in which he had placed his watch. The electrician accused the appellant by name of being a thief, whereupon the appellant, possibly because the electrician had recognised him, said "OK brother you can go". The electrician then went to a friend's house from where the police were informed of this incident by telephone.

At about 9.45 p.m. a police landrover containing the complainant arrived at the
D scene and shortly afterwards a special police corporal (P.W.3) saw the appellant moving away from the bridge. He was recognised by the complainant and apprehended by the police. Upon the appellant being searched $1 was found in his possession.

On the 2nd July 1978 an identification parade was held at the police station at which the appellant was identified by the complainant.

E The appellant gave evidence in which he claimed that he had drunk a considerable quantity of beer that evening and that, although he was at the bridge at the time of the incident and knew what was going on, it was one of the others who held a broken beer bottle in his hand and "frightened" the complainant and that he took no part in the incident.

F The trial Magistrate had no hesitation in finding that the appellant had been properly identified and in accepting the prosecution evidence to which I have referred; and had the matter rested there this appeal would have been without merit.

However a police officer (P.W.5) testified that he had interviewed the appellant under caution, and that the appellant had voluntarily replied to his questions and had signed a record of the interview. The appellant in reply to the trial Magistrate
G stated that he had no objection to this interview being given in evidence, whereupon the police officer gave evidence of the questions asked, and of the answers of the appellant which at a certain stage incriminated him. When the appellant came to cross-examine the police officer he alleged that he had been assaulted by the police while being interviewed and had been forced to make admissions, which the police officer denied, an allegation which the appellant repeated when he came to give
H evidence.

As the law stands, once the appellant alleged that his answers to the police officer were not voluntary it became necessary for the trial Magistrate to hold a trial within

a trial confined to determining the admissibility of the interview. This the trial Magistrate failed to do, although in his judgment he rejected the appellant's allegation. A

Had the conviction of the appellant depended on the answers which he gave at this interview his conviction could not have been upheld, but discounting the interview the remaining evidence is more than adequate to ground a conviction and it is manifest that no reasonable tribunal, after a proper consideration of the facts and the law, could have failed to convict the appellant on the rest of the evidence to which no objection could be taken. There was therefore no miscarriage of justice, and this a proper case for applying the proviso to section 300(1) of the Criminal Procedure Code *(R. v. Haddy* (1944) 29 Cr. App. R. 182; *R. v. Stirland* (1944) 30 Cr. App. R. 40 at 46/47). B

With regard to sentence, in the circumstances of the offence and in the light of the appellant's bad record this erred on the side of leniency. C

The appeal is accordingly dismissed.

Appeal dismissed.