IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Labasa Criminal Appeal No.3 of 1978

RANGA SAMI PADAYACHI s/o Adi Mullam — Appellant

v

REGINAM — Respondent

Mr. V. Ram for the Appellant
Mr. M. Jennings for the Respondent

JUDGMENT

The appellant was on 21st November, 1977 at the Labasa Magistrate's Court convicted on a charge of assault occasioning actual bodily harm contrary to Section 277 of the Penal Code.

The particulars of the offence were that on 3rd July, 1977 at Tabicola, Labasa, the appellant assaulted Ramesh Naidu s/o Gopal Naidu thereby occasioning him actual bodily harm.

The appellant appeals against his conviction on four grounds, two of which were merely particulars of the two main grounds, namely -

(1) that the learned trial Magistrate erred in fact and in law in holding that the prosecution had proved the charge beyond reasonable doubt; and

(2) that the said conviction was unreasonable and cannot be supported having regard to the evidence.

The prosecution evidence was as follows. At about 7 p.m. on 3rd July, 1977 the complainant (P.W.1) was driving his car and his wife Angela Devi (P.W.2) was a passenger. The complainant stopped at the junction to Bocalevu Road to allow a car travelling from the right to pass. The car was driven by the appellant. At the junction the appellant stopped his car alongside the complainant's car and started swearing at the complainant. The complainant thought the appellant was drunk and ignored him and proceeded to move on

The appellant shouted at him to stop which the complainant did thinking he would apologize. The appellant opened the door of his car and picked up an iron bar from inside about two foot long and approached the complainant's car. He leaned on the door and struck at the complainant's face with the iron rod causing him to bleed badly. A second blow did not hit the complainant but struck the car near the window glass. A medical report on the complainant showed that he had a laccerated wound ½" x ¼" on the left side of the upper lip, a bruise ½" on inner side of the upper lip, a bruise ½" on the upper gum margin, a scratch on one side of the face.

According to the defence evidence the appellant was driving his car along Bocalevu Road and as he approached the junction to Tabicola Road where he was going to turn, he saw the complainant's car come out of the junction and in turning right went onto his wrong side of the road. The appellant had to pull close to the drain on his lefthand side and stopped. He could not go any further as the complainant's car was blocking the road in front. The appellant was angry at the near collision between the two cars and shouted to the complainant that he was driving like a blind man. The complainant swore at him and then reversed his car and came forward and stopped alongside the appellant's car. The appellant called out to him "Son how are you driving" whereupon the complainant again swore at him and said, "Why are you calling me son?" The complainant then came out of his car and advanced towards the appellant who had also got out of his car. The complainant hit the appellant in the mouth and the appellant hit him back with his fists. At about the same time Mohammed Shamoom (D.W.2), a passenger in the appellant's car, came out and told them not to fight. The complainant went back to his car and drove off.

From the medical evidence it would appear that the appellant's version of the incident is more probable than the complainant's which alleged that he had been struck with an iron rod by the appellant. The injuries sustained by the complainant seem more consistent with an account of fist-fighting than the alleged use of a highly dangerous weapon.

One would have expected more serious injuries on the complainant if an iron bar had in fact been used on him.

In my opinion therefore the learned Magistrate was clearly justified in expressing doubt about the prosecution evidence in his judgment in those words:

> "I am surprised that if an iron bar or rod was used there were not more serious injuries caused or that the car of P.W.1 was not damaged....."

It is clear from the above assertion that the learned Magistrate could not possibly have been satisfied beyond reasonable doubt with respect to the prosecution version of the incident. I am satisfied that the learned Magistrate misdirected himself in holding that the case for the prosecution had been made out. In my respectful opinion the prosecution evidence, viewed in the light of the totality of evidence in the case, is unsatisfactory and is clearly insufficient to sustain a conviction against the appellant on a charge of assault occasioning actual bodily harm.

In the result the appeal must be allowed. The conviction entered against the appellant is set aside and the fine of $100, if already paid must be refunded.

Sgd. E.U. Tuivaga
JUDGE

Suva,
7th April, 1978