

Between:

KAMAL PRASAD s/o RAM DUTT

and

REGINAM

Mr. H.M. Patel for the Appellant

Mr. S. Chandra for the Respondent

JUDGMENT

On the 12th May 1980 the appellant was on his own plea convicted in the Nausori Magistrate's Court of the following charge:

" STATEMENT OF OFFENCE

Robbery With Violence

Contrary to Section 326(1)(b) of the Penal Code.

PARTICULARS OF OFFENCE

Vijay Prasad s/o Paras Ram, Chandar Sunil Kumar s/o Raj Gopal, Kamal Prasad s/o Ram Dutt, Pardeep Lal s/o Ram Govind and Birendra Prasad s/o Daya Ram on the 9th day of May, 1980 at Nausori in the Central Division, robbed Anil Kumar s/o Ram Hans of a citizen make wrist watch valued at \$40.00, a casio make calculator valued at \$15.00 and cash \$20.00 to the total value of \$75.00 the property of the said Anil Kumar s/o Ram Hans and at the time of such robbery used personal violence on the said Anil Kumar s/o Ram Hans."

Upon his conviction as aforesaid the appellant was sentenced to two and a half years' imprisonment. He now appeals against his sentence on the ground that it is harsh and excessive.

From the recital of facts in the Court below it appeared that the complainant in this case had gone to attend a wedding reception at Waituri in his own car Reg. No. R186

on the evening of Friday, 9th May, 1980. At about 9.45 p.m. he left the wedding reception with a friend to whom he had offered a lift to Korociriciri via the Lakena Irrigation Area Road. After dropping off his friend complainant continued on his way. Along the way his car's lights went off and so he stopped to repair them. Where he stopped his car was rather secluded with houses located at long intervals from each other. It was while he was carrying on the repairs on his car that the four accused and another young person set upon him and robbed him of a calculator valued at \$15, \$20 cash and a wrist-watch valued at \$40. As a result of the attack complainant sustained injuries to his face. The matter was immediately reported to the police at Nausori. Next day the four accused were located and questioned during which they admitted the offence. Searches of their premises led to the recovery of complainant's wrist watch at appellant's house and the calculator at first accused's house.

The appellant is nineteen years of age and is a farmer. He is a first offender.

In a case such as this where gang violence was used upon an innocent person with a view to his being relieved of his valuable possessions a deterrent sentence was called for. In the present case a custodial sentence was inevitable. However, in assessing the length of the sentence to be imposed mitigating factors, where they are present, must be taken into account and given due weight.

In this case the appellant is young. This is his first offence. The two main items stolen have been recovered. The complainant's injuries were not serious and there is no likelihood that he may suffer permanent physical disability from his experience.

In these circumstances I am satisfied that the sentence of two and a half years' imprisonment passed on the appellant was too long.

000194

The sentence imposed in the Court below is therefore set aside and in lieu thereof I substitute a sentence of twelve months' imprisonment.



(T.U. Tuivaga)
Chief Justice

Suva,
31st October 1980.