

IN THE SUPREME COURT OF FIJI  
Appellate Jurisdiction  
Criminal Appeal No. 2 of 1980

Between:

GEORGE KADIVUKA EMINONI Appellant

v.

REGINAM Respondent

Mr. E. Vula for the Appellant  
Mr. M. Raza for the Respondent

JUDGMENT

The appellant was, on his own plea, convicted by the Magistrates Court Suva of assault occasioning actual bodily harm contrary to Section 277 of the Penal Code and sentenced to twelve months' imprisonment. In addition the learned Magistrate made the following order:

" Compensation to complainant of \$100, in default a further 4 months' imprisonment consecutive."

The appellant appeals against the sentence on the ground that it is harsh and excessive.

At the end of the outline of facts the prosecutor stated:

" Accused interviewed by police. Admitted the offence. Says he was assaulted first."

Addressing the Court learned counsel for the appellant stated:

" Fijian punched the accused. Complainant punched accused about 4 times."

2.

There is nothing on the record to show whether the prosecution accepted this version. In any case, even if the appellant had been provoked, the extent of violence he used was extremely serious and quite unjustifiable. He dragged the complainant down concrete stairs and gave him such a beating that he was knocked unconscious necessitating admission into hospital where he was kept under treatment for thirteen days. Learned counsel for the appellant did not suggest that the appellant himself had received any injury of any kind.

In view of this, the sentence is neither excessive nor wrong in principle.

As for the order for compensation it seems that the learned Magistrate intended to act under section 159(1)(b) of the Criminal Procedure Code which empowers compensation to be paid out of a fine. The default order of four months' imprisonment also suggests that what the learned Magistrate had in mind was a fine. The order, however, does not say so.

That order, therefore, is set aside. The prison sentence of twelve months will remain unaltered.

(Sgd.) G. Mishra  
JUDGE

Suva,

15th February 1980