

Appellate Jurisdiction
Criminal Appeal No. 7 of 1980

Between:

ARTHUR MURPHY

Appellant

and

REGINAM

Respondent

Mr. E. Vula for the Appellant

Mr. I. Khan for the Respondent

JUDGMENT

This is an appeal by the appellant against his conviction and sentence in the Magistrate's Court at Levuka on 20th June 1979. Appellant was charged with the attempted rape of one Monique Asselin on 30th April, 1979 and was convicted after trial and sentenced to four years' imprisonment.

The facts as accepted by the learned Magistrate were as follows.

On 30th April 1979 Monique Asselin went to Levuka for a visit accompanied by a friend, Cecile Martel. They were from Canada on a holiday in Fiji. On that day they were collecting shells along the beach on the North Coastal Road. On the way back to return to the Old Capital Inn where they were staying they saw the appellant staring at them. When Monique got close to appellant, he spoke out and said how sexy and sweet she looked. Monique and her companion did not speak to him but walked on along the seashore. Appellant followed and caught up with them. He grabbed hold of Monique from the back on her buttock and pushed her towards the bush nearby. Both girls tried to push appellant away but to no avail. Appellant knocked Monique down on the ground. He then grabbed her by the waist and legs and tore her dress and bathing suit exposing her private parts. Monique's companion tried to pull appellant away whereupon appellant gave

her a punch. When appellant tried to take off Monique's dress, she screamed out for help. Appellant punched her on the breast and said that he would punch her some more if she continued to scream. At that stage Monique pretended that someone was coming in their direction. This caused the appellant alarm and made him run off. The two girls then sought help from the nearest home and soon the matter was reported to the police.

The appeal against conviction is on the ground that the finding of the learned Magistrate is not supported by the evidence. The evidence adduced from the prosecution witnesses and which was accepted by the trial Court was more than sufficient to justify appellant's conviction on the charge of attempted rape. This ground of appeal fails. Appeal against conviction is therefore dismissed.

As regards the appeal against sentence the facts of this case show a course of conduct which was most reprehensible. The victim was in Fiji on holiday which was marred by the criminal behaviour of the appellant. She and her companion were treated to a type of behaviour which could not but tarnish the image of Fiji overseas. However having regard to the other features of the case it seems to me that the sentence of four years' imprisonment is a little too long. It will be noted that the complainant did not receive any serious or permanent injury nor was she under any real risk of being seriously injured. It could not have been because to his credit the force appellant used was restrained and lacked viciousness. The whole incident took place in broad daylight and in a public place indicating an act more of foolishness on the part of appellant rather than of hardened criminality. No doubt the way the two girls were clad in bathing suits on the beach contributed much to appellant losing his emotional balance and behaving as he did. His conduct on that day would appear to be uncharacteristic. In any event I do not think the appellant is likely to behave in the same manner again where female strangers are concerned. If I am wrong in this estimate the penal consequences for him will certainly be heavy and rightly so.

The sentence of four years' imprisonment imposed in the Court below is set aside and in its place I substitute a sentence of three years' imprisonment.



(T.U. Tuivaga)
Chief Justice

Suva,
4th July 1980.

