

Appellate Jurisdiction

Criminal Appeal No. 16 of 1980

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Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

and

JOPE TASERE

Mr. I. Khan for the Appellant
Mr. E. Vula for the Respondent

JUDGMENT

On 28th November 1979 in the Navua Magistrate's Court the respondent was convicted after trial on two counts, namely wrongful confinement contrary to section 288 of the Penal Code and assault occasioning actual bodily harm and was sentenced respectively on the first count to a fine of \$100 or three months' imprisonment and on second count to a fine of \$80 or three months' imprisonment. In addition the respondent was bound over for a period of twelve months to keep the peace and be of good behaviour.

The Director of Public Prosecutions appeals against the sentence imposed on the respondent on the ground that it is manifestly lenient having regard to the nature and circumstances of the case.

The facts as found by the Court are conveniently summarised in the judgment where the learned Magistrate said:

"I find as a fact and am satisfied beyond all reasonable doubt that on 15.5.79 at about 6.30 p.m. the accused did take P.W.1 in the van and failed to stop at the usual place where villagers have their bath despite P.W.1 drawing his attention to the fact that P.W.2 has not boarded; and accused failed to stop the van when requested by P.W.1 to do so and she tried to draw his attention to her wishes by banging the body of the van but the accused deliberately paid no attention to it and instead accelerated and kept going. I have no doubt whatever in my mind and I do so find as a fact that the accused's

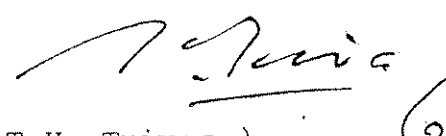
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behaviour in the circumstances put fear in the mind of P.W.1, she feared that the accused would not stop and she feared that she was in danger. The way accused drove and the manner in which the accused and his two passengers were talking, laughing and continuously looking at P.W.1 put fear in her. Consequently, P.W.1 jumped from the van. The injuries which she received are as a result of her jumping from the van in the circumstances."

The learned Magistrate did not consider on the facts of this case that a custodial sentence was warranted. In coming to this view he took into account the fact that a reconciliation had been effected between the parties. He also took into account the view he had formed that the respondent did not have any ulterior sexual motives on the complainant.

Having carefully considered all the circumstances of this case, this Court is unable to say that the learned Magistrate exercised his discretion on sentence wrongly when he opted for a fine rather than a custodial sentence in this case.

I would therefore dismiss the appeal.


(T.U. Tuivaga)
Chief Justice

Suva,
29th August 1980.