

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 67 of 1981

102

000331

Between :

1. TAITO RAIKADRAVO
2. ASERI BATIRATU

Appellants

- and -

R E G I N A M

Respondent

Mr. A. Kato for 2nd Appellant.
1st Appellant in person.
Mr S. Kepa (DPP) for Respondent

J U D G M E N T

Both appellants pleaded guilty in the Suva Magistrate's Court on 4th September 1981 to two counts of robbery with violence contrary to section 293(1) of the Penal Code.

The particulars in respect of the first and second counts read as follows :

"

FIRST COUNT

Particulars of Offence

TOMASI QILIA, TAITO RAIKADRAVO and ASERI BATIRATU, on the 2nd day of September 1981 at Nasaibitu, Tailevu in the Central Division, assaulted and robbed LATCHMAN SINGH s/o DOR SAMI of \$123.00, the property of the said LATCHMAN SINGH s/o DOR SAMI. "

"

SECOND COUNT

Particulars of Offence

TOMASI QILIA, TAITO RAIKADRAVO and ASERI BATIRATU, on the 2nd day of September, 1981 at Nasaibitu, Tailevu in the Central Division, assaulted and robbed MOHAMMED ASHIK s/o MOHAMMED YUSUF of \$40, the property of the said Mohammed Ashik s/o Mohammed Yusuf.

First appellant was sentenced to three years' imprisonment on each count and the second appellant was sentenced to three and a half years on each count. Sentences in respect of each appellant were ordered to be served consecutively, making a total of six years imprisonment for first appellant and seven years' imprisonment for the second appellant.

The facts showed that in the early evening of 2nd September Latchman Singh, a bus driver was in his bure at Nasaibitu, Tailevu. Later he was joined by Mohammed Ashik, another bus driver at the house. While they were having their meal the two appellants and a third person forced their way into the house and assaulted the two occupants and robbed them of their day's takings and escaped. Latchman Singh was knocked unconscious and had to be rushed in an ambulance to the CWM Hospital. He had multiple facial cuts and a severe black eye. He was admitted for several days in hospital. Mohammed Ashik also received injuries and was treated at Nayavu Health Centre the same night and sent home.

When interrogated by the police both appellants admitted the robbery. Neither of the appellants was represented in the Magistrate's Court.

At the hearing of the appeal Mr. Kato appeared for the second appellant and sought to re-open the issue of conviction on the ground that the second appellant was not in fact involved in this crime and that his confession was extracted by duress and threat from the police.

During the argument on appeal I pointed out that I have no jurisdiction to re-open the question of conviction in relation to second appellant because the pleas of both appellants as recorded by the learned magistrate clearly appeared to be unequivocal and there was no evidence to support the allegations made against the police. I tried

to assist as much as I could realising that Mr. Kato was not concerned in the trial in the Magistrate's Court and was only briefed on the day of the hearing of the appeal. At his request the hearing was adjourned more than once as he wanted time to study what evidence there might be on the issues of duress and threat. I had at the same time also asked the Director of Public Prosecutions (Mr. Kepa) to examine the police file to see if there was anything in it that might tend to support the appellants' contention. During the adjourned hearings Mr. Kato obtained several affidavits which he filed in this Court. The affidavits obviously attempted to show that the second appellant had an alibi and could not possibly have been involved in the robbery. There was nothing in them touching on the question of duress or threat. On the whole I find the affidavits rather inconclusive in nature. I can derive no real assistance from any of them.

Mr Kepa has also confirmed that his enquiries did not disclose any matter that might be of assistance to the appellants. He went on to say that he could not accept that the appellants were misled in pleading guilty to the charges which were put to them. He said both of them have been to prison before and knew that they did not have to plead guilty if they were not involved as alleged.

In these circumstances I am satisfied that the pleas of guilty entered by both appellants in the Magistrate's Court were clear and unequivocal and were properly received and acted upon by the court. It is quite clear that there is no basis upon which I can properly re-open the issue of conviction particularly in view of the clear terms of section 309(1) of the Criminal Procedure Code which states :

" 309.(1) No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on such plea by a magistrates' court, except as to the extent or legality of the sentence".

The purported appeal against conviction by the two appellants fails and is dismissed.

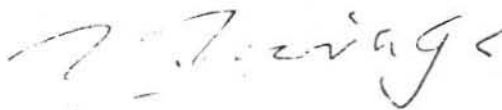
With regard to the appeal against sentence, I do not think it was proper for the sentences imposed in respect of each appellant to be ordered to run consecutively. The two incidents concerned occurred at the same place and time and on principle the sentences should really have been made concurrent rather than consecutive. The risk involved in imposing consecutive sentences was that the overall sentence would be unduly long as is now clearly borne out by the lengths of prison sentences given to each appellant. The sentences passed in the Court below are accordingly set aside. In deciding the appropriate sentences in this case I bear in mind the fact that both appellants had pleaded guilty which is a strong mitigating factor. In lieu of sentences passed by the trial Court the appellants will receive the following sentences :

First Appellant (Taito Raikadravo)

1st Count - 3½ years' imprisonment.
2nd Count - 3½ years' imprisonment.
to be served concurrently.

Second Appellant (Aseri Batiratu)

1st Count - 3½ years' imprisonment
2nd Count - 3½ years' imprisonment
to be served concurrently.


(T. U. Tuivaga)
Chief Justice

Suva,
12 March 1982.