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IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 29 of 1982

Between:

ADI NARAYAN NAIDU s/o ABHIMANU

and

REGINAM

Appellant in Person

Mr. J. Subhrawal for Respondent

REASONS FOR JUDGMENT

This appeal was allowed at the conclusion of the hearing when the conviction and sentence entered against appellant were set aside. The reasons for judgment were reserved to be given later and this I now set out to do.

On 15th March 1982 at Suva Magistrate's Court appellant was on his own plea convicted of committing an unnatural offence contrary to section 175(a) of the Penal Code and was sentenced to four years' imprisonment.

Although the appeal was against sentence it was clear from what the appellant told this Court at the hearing of the appeal that he was in fact disputing that the offence ever took place as alleged. He said he admitted the charge in the Court below out of fear for the police who had threatened him to plead guilty.

When an accused especially a young uneducated one such as this appellant who was charged with a serious and somewhat technical offence [redacted] as buggery and who was not

legally represented at his trial, a trial court ought to be slow in accepting a plea of guilty on its face value without more. Where a serious offence is alleged against an unrepresented person with little education it is often prudent in the wider interest of justice for the court not to enter a plea of guilty so that it could hear evidence and satisfy itself with regard to the strength and reliability of the case for the prosecution. In my opinion such a practice should commend itself to a trial court particularly in a situation where upon conviction a court was likely to impose a long prison sentence.

The particulars of offence alleged against appellant were that on 7th February 1982 at Nasinu he had carnal knowledge of Sarwan Kumar s/o Abhimanu against the order of nature. The victim who is appellant's own brother is eight years' old.

The essence of the offence charged against appellant is that sexual intercourse per anus must be proved. This Court has seen the victim in court when he was brought in by their grandmother who was obviously anxious for the appellant to rejoin the family. What this Court particularly noted about the alleged victim was how small and puny he really is in size so that it is difficult to imagine that an act of intercourse per anus as alleged could have been successfully perpetrated upon him by an adult person such as the appellant is. Apart from this the medical evidence itself does raise doubts about the occurrence of the incident as

alleged and indeed tends to support appellant's denial before this Court that the alleged offence never took place. According to the medical evidence the alleged victim was examined on the same day at the C.W.M. Hospital and that no injuries were noted around or inside his anus nor were there any blood stains or foreign body in the area of the anus as one would reasonably expect if penetration was achieved and semen discharged as alleged by the prosecution.

The result was that this Court was left in grave doubt about the propriety of the conviction entered against appellant in this case.

Accordingly the appeal was allowed and conviction and sentence were set aside

(T.U. Tuivaga)
Chief Justice

Suva,
15th June 1982.