

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO: HAA 063 OF 2008

BETWEEN:

SEIVALATI RATUBALAVU

Appellant

AND:

THE STATE

Respondent

Date of Hearing: 30th July 2009

Date of Judgment: 10th September 2009

Counsel: Appellant in Person
Mr. L. Sovau for State

JUDGMENT

[1] The appellant was convicted on his plea of guilty on one count each of robbery with violence, unlawful use of motor vehicle and resisting arrest. He was sentenced to 4 years imprisonment for robbery with violence, 4 months imprisonment for unlawful use of motor vehicle, and 6 months imprisonment for resisting arrest, to be served concurrently. The appeal is against sentence alone.

- [2] The first ground of appeal is that the learned Magistrate failed to consider the prompt guilty plea of the appellant.
- [3] The appellant was arraigned in the Magistrates' Court on 24 July 2007. Although the charges were read out, no plea was taken from him. He was remanded in custody until 6 August 2007, and thereafter remained in custody till 3 September 2007 when he was granted bail.
- [4] On the next mention date after being granted bail, the appellant failed to appear in court. A bench warrant was issued and on 12 December 2007 he was arrested. The court released him again, on bail.
- [5] After 12 December 2007, the appellant on one occasion informed the court that he would defend himself, and then later, he changed his position and informed the court that he would engage a private lawyer.
- [6] On the day of the trial, that is, 17 June 2008, the appellant pleaded guilty to the charges. He was unrepresented. He was sentenced on 4 September 2009, after failing to appear on an earlier date for sentence.
- [7] It has been the practice of the courts in Fiji to give a reduction of one third in the sentence for an early plea of guilty by an accused (***Mahendra Singh v. State Criminal Appeal No.AAU0036 of 2008S***).

[8] In the present case, the appellant pleaded guilty on the day of the trial. He could have done so earlier. However, this does not deprive him from the principle that his plea ought to have been taken into account in the sentence.

[9] In his sentencing remarks, the learned Magistrate said:

"I note that you have entered a guilty plea. The guilty plea was entered on what was set down as a hearing date.

You were first arraigned on the 24th of July 2007. You entered a guilty plea on the 4th of March 2008. While this may not necessarily be an early guilty plea in the strict sense, you have nevertheless saved the courts time."

[10] Clearly the learned Magistrate took into account the appellant's guilty plea in the sentence. No error of law or fact has been shown in the manner the learned Magistrate considered the guilty plea of the appellant. This ground fails.

[11] In the second ground of appeal, the appellant contends that the learned Magistrate before passing sentence should have determined the degree of his culpability and motive.

[12] The facts admitted by the appellant were that he was acting in concert with others when the complainant was robbed. The complainant was a taxi driver. They got the complainant to drive to an isolated location, forced him to stop the taxi, assaulted him and stole \$55.00 cash and a mobile phone from him. After committing the robbery, they fled in the complainant's taxi.

- [13] The appellant was equally responsible as the others under the principle of joint enterprise. It did not matter what role the appellant played in the robbery or what his motive was as far as the sentence was concerned. The appellant said he was drunk when he committed the robbery. The learned Magistrate considered the appellant's state of intoxication as a mitigating factor. Commission of an offence in a state of intoxication is not a mitigating but is an aggravating factor (**Mosese Rawaqa v State** *Criminal Appeal No.AAU0006 of 2005S*). The appellant is fortunate that the learned Magistrate took intoxication as a mitigating factor. The second ground fails.
- [14] The third ground of appeal is that the learned Magistrate failed to consider the "four classical principles" of sentencing before imposing the term of 4 years imprisonment. I assume the appellant is referring to the principles of retribution, deterrent, prevention and rehabilitation. This ground of appeal fails to particularize how the learned Magistrate failed to consider the four sentencing principles. In any event, the learned Magistrate gave detailed cogent reasons for the sentence. It is implicit from the reasons of the learned Magistrate that he considered the principles of retribution, deterrent, prevention and rehabilitation when imposing the sentence of 4 years imprisonment. This ground fails.
- [15] The fourth and fifth grounds can be considered together. The appellant contends that the sentence of 4 years imprisonment is manifestly excessive and wrong in all the circumstances of this case.
- [16] The robbery was committed on a taxi driver. When a taxi driver is attacked, the court has stressed the need for harsh deterrent sentences to protect taxi drivers,

and the facility they provide for public (**Patric Fong v. The State** Criminal Action No. HAC010 of 2004S).

[17] In the case of **Vilikesa Koroivuata v. The State** Criminal Appeal No. HAA0064 of 2004 Winter J observed:

“Violent and armed robberies of taxi drivers are all too frequent. The taxi industry serves this country well. It provides a cheap vital link in short and medium haul transport. Taxi drivers are particularly exposed to the risk of robbery. They are defenceless victims. The risk of personal harm they take everyday by simply going about their business can only be ameliorated by harsh deterrent sentences that might instill in prospective muggers the knowledge that if they hurt or harm a taxi driver they will receive a lengthy term of imprisonment.”

[18] The learned Magistrate took the attack on a taxi driver as an aggravating factor and concluded:

“Given the entire circumstances in this matter, and this includes the circumstances of the offending and the aggravating features, the lack of any recovery or restitution on the complainant on one hand and your guilty plea and mitigation, your personal circumstances on the other you are sentenced to 4 years imprisonment on the first count.”

[19] Clearly the learned Magistrate considered all the relevant factors except for one matter before arriving at the sentence of 4 years imprisonment for the offence of robbery with violence. The appellant had spent nearly two months in remand pending trial. The remand period should have been taken into account in the sentence. A small reduction in the sentence is therefore justified to reflect the

time spent in remand. Otherwise, the term of 4 years imprisonment was within the tariff for this type of offending.

[20] In the sixth ground of appeal, the appellant contends that the learned Magistrate failed to consider that he was willing to compensate the victim in full.

[21] In his sentencing decision, the learned Magistrate said:

“I have nothing before me to indicate that you have attempted to either compensate the victim or even apologize to him. There has been no recovery made by the police.”

[22] There was no evidence before the learned Magistrate that the appellant had compensated the victim. The willingness of the appellant to compensate the victim is not enough to justify a reduction in the sentence. The appellant had ample opportunity since 24 January 2007 to compensate the victim. He has not done so and therefore the learned Magistrate was correct in rejecting the claim. This ground has no substance.

[23] The appeal is allowed on the ground that the time spent in custody pending trial by the appellant should have been taken into account in the sentence. The sentence of 4 years imprisonment for robbery with violence is substituted with a sentence of 3 years and 10 months imprisonment.

Daniel Goundar
JUDGE

At Lautoka
10th September 2009

Solicitors:

Appellant in person
Office of the Director of Public Prosecutions for State