

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 9 of 1982

208
000345

Between:

RAVENDRA s/o RAM BHAROS

and

REGINAM

Mr. H. Lateef for the Appellant

Mr. S. Singh for the Respondent

JUDGMENT

On 25th November 1981 at the Suva Magistrate's Court appellant was convicted on a charge of common assault contrary to section 276 of the Penal Code and was sentenced to a fine of \$20 or 20 days' imprisonment and in addition he was bound over for eighteen months and ordered to pay costs of \$25.

Appellant is appealing against his conviction and against the orders of binding over and costs.

The charge in this case was based on an incident that occurred at the Raiwaqa Market on 2nd March, 1981 involving appellant and his former de facto wife (P.W.1). P.W.1 claimed that she was accosted and assaulted by appellant. Eparama Toutou (P.W.2) gave evidence to the effect that he was at Raiwaqa Market when he saw appellant assault P.W.1. There was undoubtedly discrepancy in the description of the assault by the two prosecution witnesses but it is quite obvious from a perusal of the evidence that P.W.1 was in fact assaulted on the

day in question by the appellant and at the place alleged. For the purpose of his finding the learned Magistrate accepted P.W.2's account as to the detail of the assault. He described P.W.2 as an independent witness. The medical evidence corroborates the fact that P.W.1 who was examined at the C.W.M. Hospital on the same day had been assaulted and received injuries. The conviction of appellant for common assault was therefore amply justified.

Having regard to the history of bitter personal antagonism between appellant and P.W.1 after they fell out with each other, the order of binding over was in my opinion most appropriate in the circumstances and the complaint now made is clearly misplaced.

As to the award of \$25 costs made against appellant, this Court cannot say that the learned Magistrate wrongly exercised his discretion in the matter. The case was evidently a hopeless one for appellant and in view of the relatively minor nature of the charge against him, his decision to fight the case in Court against his former lover virtually borders on the vexatious.

I find no merit in this appeal which must be dismissed.

Chief Justice

Suva,
11th June 1982.