

IN THE HIGH COURT OF FIJI AT SUVA

In the matter of an appeal under section
246(1) of the Criminal Procedure Act
2009.

RAJENDRA NARAYAN

Appellant

CASE NO: HAA. 39 of 2017
[MC Nausori, Crim. Case No. 38 of 2013]

Vs.

STATE

Respondent

Counsel : Mr. A. Reddy for Appellant
Mr. W. Elo for Respondent

Hearing on : 16 January 2018

Judgment on : 31 January 2018

JUDGMENT

1. The appellant was charged before the magistrate court at Nausori for the following offence;

Statement of Offence

GIVING FALSE INFORMATION TO A POLICE OFFICER: *contrary to section 201 (a) of the Crimes Decree 2009.*

Particulars of Offence

RAJENDRA NARAYAN, on the 16th day of February 2011 at Nausori in the Central Division gave information that Police Constable 3201 Avinesh Maharaj demanded money from his employee to police officer namely Sergeant Pradip Lal knowing the information to be false and intending to cause investigation against

police constable 3201 Avinesh Maharaj.

2. After trial the Learned Magistrate found the appellant guilty as charged and sentenced him for an imprisonment term of 18 months and two weeks on 26/09/17.
3. The appellant had filed a timely appeal against his conviction and the sentence. The amended grounds of appeal are as follows;

Against Conviction

1. *That the learned trial magistrate erred in law and in fact in finding that the prosecution had proven its case beyond reasonable doubt for the following reasons;*
 - a) *that the learned magistrate failed to consider all the evidence provided by the defence.*
 - b) *that the learned trial magistrate failed to give proper weight to prior inconsistent statements made by the prosecution's witness PW1 who gave statements purporting that money was demanded from him by a police constable namely Avinesh Maharaj.*
 - c) *that the learned trial magistrate erred in law and in fact in convicting the accused and not considering the material fact that the prosecution did not prove the case beyond reasonable doubt with PW1 as a key witness.*

Against Sentence

1. *That the learned trial magistrate erred by not considering the all the mitigating facts provided by the accused being;*
 - a) *the soul bread winner of his family which includes his step mother, his four children ages 23,21,14 and 12, wife, sister in law, nieces and nephews who all depend on him.*
 - b) *the accused has been operating his business for over 11 years and at the time that he was arrested and subsequently, whilst being interviewed, he was sincere and cooperated with the police.*

- c) *the accused is also a diabetic patient (chronic obstructive airway disease) which requires him to undergo urgent treatment and constant medical examination when the said need arises which may not be to his avail if he while he is in custody.*
- d) *his family is dependent on him as regards, providing for their daily needs.*
- e) *he is incredibly and sincerely remorseful for his actions and can assure the court that being charged for this offence has served sufficiently as a deterrent.*
- f) *That the accused is a first time offender and that a custodial sentence should be a last resort.*

2. *That the learned trial magistrate erred in law and in fact in sentencing the appellant to a term of 18 months and 2 weeks imprisonment which in the circumstances, was harsh and excessive.*

Facts in brief

4. According to the evidence led by the prosecution first prosecution witness ("PW1") was employed as a driver by the appellant at the time material to the offence. PW1 had stated in his evidence that on 21/12/10 he had an encounter with Police Constable Avinesh Maharaj [second prosecution witness ("PW2")] where PW2 checked his driver license and after that the appellant complained that PW2 demanded money from him (PW1). He had said that he had given 4 statements to the police. According to PW1, in his first statement he stated that PW2 did not demand any money. The 2nd statement was recorded by the second defence witness ("DW2") who is a police officer at DW2's residence where the appellant was also present. According to PW1, it was the appellant who told what to write in the statement and he (PW1) just signed though he knew that it is false because the appellant who was his boss told him to do so. He had given 2 other statements. Four statements referred to above had been tendered in evidence as prosecution exhibits.
5. With regard to the tendering of the aforementioned statements the court record

simply states "*P Exhibit 1 to 4 – statement of PW1 to Police*". Though I find four statements purported to be made by PW1 in the case record tagged as exhibits, apart from the handwritten statement dated 24/03/11 which is marked as 'PE1', none of the other statements are given a marking. It is the duty of the parties and also of the court to ensure that exhibits are tendered properly and that each exhibit is properly marked.

6. Upon perusing the aforementioned exhibits tendered, I note that the first statement had been given by PW1 on 06/01/11 where it is clearly stated that PW2 did not demand for money. The second statement had been given on 16/02/11 which was recorded by DW2. It states that PW1 had given a 'documentary report through the management of Rajen's Towing and Taxis' in December 2010 and it is also stated that the statement he gave in January 2011 was not given on his free will and he made that statement because police officers at the Nausori Police Station threatened him. According to this statement PW1 further states that PW2 did demand money from him. PW1's third statement is dated 24/03/11 and there it is stated that PW2 did not ask for money and it was the appellant who told DW2 to write in the statement dated 16/02/11 that PW2 demanded money from him (PW1). The fourth statement is dated 06/12/12 and the contents of this statement are somewhat similar to the contents in the statement dated 24/03/11. However, it is further stated in this final statement that the appellant wanted to put PW2 in trouble.
7. PW2 had said in his evidence that he never demanded any money from PW1. The third prosecution witness ("PW3") is also a police officer and he had stated that PW2 came to his office with PW1 who is his neighbour and PW1 did not complain to him about PW2 demanding for money.
8. The fourth prosecution witness ("PW4") had stated that he is the investigating officer of the case. He had tendered a statement given by the appellant dated 16/02/11 as Prosecution Exhibit 5 ("PE5") and the cautioned interview of the appellant as Prosecution Exhibit 6 ("PE6"). The fifth prosecution witness ("PW5")

had tendered the charge statement of the appellant as Prosecution Exhibit 6 (two exhibits have been marked as PE6).

9. That was the prosecution case in brief. The appellant in his evidence had stated that PW1 on 21/12/10 spoke to him over the phone and told him that a police officer by the name of Avinesh had stopped his vehicle and is demanding money. He told PW1 not to give money. Thereafter he took PW1 to Nabua Police Station to lodge a report. Since the police officers were not willing to take down the report, he called DW2 a police officer who was known to him. Thereafter DW2 took down the statement of PW1 at the station. He left when DW2 started taking the statement. He had also made a complaint to the Commissioner of Police regarding this incident.
10. DW2 had stated in his evidence that he received a call from the appellant on 21/12/10 saying that one of his employees needs to give a statement and the officers at the Nausori Police Station are busy. He had said that he recorded the statement of PW1 at Nabua Police Station and the statement was given by PW1 freely. This was the defence case.

Appeal against the conviction

11. In the single ground of appeal against conviction the appellant alleges that the learned magistrate erred in concluding that the prosecution had proven the case beyond reasonable doubt based on following three reasons;
 - a) Failed to consider all the defence evidence;
 - b) Failed to give proper weight to the prior inconsistent statements of PW1;
and
 - c) Not considering that the 'prosecution did not prove the case beyond reasonable doubt with PW1 as a key witness'.
12. The elements of the offence of *giving false information to a police officer* contrary to section 201 (a) of the Crimes Act can be identified as follows;
 - I. The accused;

- II. Gave information to a person employed in the public service;
- III. The accused knew or believed that the said information is false;
- IV. The accused intended to cause or knew it to be likely that he will cause the person employed in the public service whom he gave the information;
 - (a) to do or omit anything which the said person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or
 - (b) to use the lawful power of the said person employed in the public service to the injury or annoyance of any person

13. The prosecution case was that the appellant made a complaint to PW4 who was a police officer that PW2 asked money from PW1 and this was false information. It was alleged that the appellant knew that the aforementioned information was false and he intended to cause PW4 to initiate an investigation against PW2 by giving that false information.
14. The date of offence according to the charge is 16/02/11 which is the date of the statement of the appellant recorded by PW4 which was tendered as PE5.
15. However, the evidence of PW1, the appellant and DW2 suggests that there is a statement given by PW1 to the police on 21/12/10, the date on which the incident in question between PW1 and PW2 took place and an investigation had been initiated on that statement. It appears that this statement was not disclosed by the prosecution. In the statement of PW1 dated 06/01/11 it is specifically stated that PW2 did not demand any money. A reasonable inference can be drawn from that statement that there was a pending investigation as at 06/01/11 into the issue whether or not PW2 demand money from PW1. Given the above, it is clear that the statement of appellant dated 16/02/11 was recorded during the aforementioned investigation.
16. The allegation against the appellant according to the charge is that the appellant intended to cause PW4 to carry out an investigation against PW2 by giving the


information contained in the statement dated 16/02/11. As I have stated above, the evidence suggests that there was already a pending investigation and in fact the aforementioned statement of the appellant was recorded during the said investigation.

17. Given the above, the evidence in this case does not establish the fourth element of the offence alluded to above. Moreover, the evidence led by the prosecution does not establish beyond reasonable doubt that the appellant knew or believed that the information he gave on 16/02/11 to PW4 is false.
18. Therefore, the evidence led before the Learned Magistrate does not establish the offence against the appellant as charged and for this reason the appeal against the conviction should be allowed.
19. Since I have decided to allow the appeal against the conviction, I will not consider the appeal against sentence.
20. Given the nature of evidence, I do not consider it appropriate to order a retrial against the appellant.

Orders of the Court;

- i.) Appeal against the conviction is allowed. The conviction against the appellant in the magistrate court of Nausori criminal case no. 38 of 2013 is set aside and the ensuing sentence is quashed; and
- ii.) The appellant is accordingly acquitted and to be released forthwith.




Vinsent S. Perera
JUDGE

Solicitors for the Appellant : Reddy & Nandan Lawyers, Suva.
Solicitors for the State : Office of the Director of Public Prosecutions, Suva.