

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 41 of 1961

Between:

MOHAMMED HANIF, s/o ABDUL RAZAK Appellant

v.

REGINAM Respondent

Perjury—production of court record—whether proof of what the alleged perjurer has said before that court.

The appellant had been convicted by the Magistrate's Court of giving perjured evidence in a trial before the Supreme Court. The record of the Supreme Court trial had been produced before the trial magistrate who had relied upon it as proof of what the appellant had said in evidence before the Supreme Court.

Held.—The Supreme Court record could not be relied upon for this purpose.

Appeal allowed.

A. Kearsley for the Appellant.

Justin Lewis for the Respondent.

KNOX-MAWER, Ag. J. (20th October, 1961).

The appellant was convicted before the Magistrate's Court of the First Class, Lautoka, of perjury contrary to section 106 (i) of the Penal Code. He was convicted upon two counts and sentenced to two years' imprisonment on each count, the sentence was to run concurrently. He has appealed against both conviction and sentence.

The particulars of offence are as follows:—

First Count—

Mohammed Hanif son of Abdul Razak, being lawfully sworn as a witness in a judicial proceeding to wit the trial on indictment of Rambali son of Ludur and Ishak Ali son of Ali Hussein in the Supreme Court of Fiji at the Lautoka Criminal Session on the 24th day of June, 1960 did wilfully make a statement which he the said Mohammed Hanif known to be false to wit: that he the said Mohammed Hanif on the 25th day of January, 1960 at an identification parade at Lautoka Police Station did not pick out the accused Ishak Ali as the person whom the said Mohammed Hanif had driven to Tavua from Tuvu on the 28th day of December, 1959.

Second Count—

Mohammed Hanif son of Abdul Razak, being lawfully sworn as a witness in a judicial proceeding to wit the trial on indictment of Rambali son of Ludur and Ishak Ali son of Ali Hussein in the Supreme Court of Fiji at the Lautoka Criminal Session on the 24th day of June, 1960 did wilfully make a statement which he the said Mohammed Hanif known to be false to wit: that he the said Mohammed Hanif at an identification parade at the Lautoka Police Station on the 25th day of January, 1960 having pointed out the accused Ishak Ali as the person who he the said Mohammed Hanif had driven to Tavua from Tuvu on the 28th day of December, 1959, did not say of the said Ishak Ali "I am sure of him".

A certified copy of the Supreme Court record of the trial of Rambali and Ishak Ali was produced before the lower court. However, under the present law, the record itself is not proof of what the accused allegedly stated in that trial. It is conceded by the Crown that the learned Senior Magistrate, in his judgment, mistakenly relied upon the record for this purpose. Indeed the judgment makes no reference whatsoever to the evidence of Nur Ali, the Supreme Court Interpreter, who was called by the Crown, and it is impossible to say what, if any, value was placed upon this witness's recollection. In any event, the error in so relying upon the court record is, in my view, an incurable mistake. The appeal must therefore be allowed and the convictions upon both counts set aside.