

IN THE MAGISTRATES COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 106 - 2014

STATE

-v-

CHINSAMI NAIDU

Before : RM Fotofili L.
For The Prosecution : Inspector Lenaitasi S. [Police Prosecution]
For The Defendant : Ms Henao G. and Mr Samy A. [Legal Aid Commission]
Trial Date : 3rd May 2019
Date of Judgment : 26th July 2019
Date of Sentence : 4th of February 2020

SENTENCE

BACKGROUND

1. **CHINSAMI NAIDU**, having pleaded not guilty and after your trial, I have found you guilty and convicted you of the following charge [amended] :

Statement of Offence

GIVING FALSE AND MISLEADING INFORMATION: Contrary to section 333 (1) (a) (b) (i) and (c) (ii) of the **Crimes Act of 2009**.

Particulars of Offence

CHINSAMI NAIDU on the 19th day of May, 2014 at Tavua in the Western Division gave false and misleading information to Police Officer namely **Corporal Number 2086 MAHESH CHAND**.

2. Police were conducting a formal enquiry into the supposed disappearance of a married lady. The defendant was in a relationship with that lady. Police and the lady's husband went to the defendant's house to enquire with the defendant

whether he knew the whereabouts of the lady. The defendant had been asked by the lady not to reveal her location. The lady did not wish to be with her husband anymore. When police came over to the defendant's home, the defendant volunteered information and told the police officer that he did not have any information about the whereabouts of the lady being searched for. This was false as the defendant had accompanied the lady to Suva about 4 days earlier. They rented a house or place at Nabua, Suva. The defendant returned back to Tavua and acted oblivious. The defendant could have refused to answer the police officer's question but he chose to give a false answer. Eventually, the defendant later gave a statement to police and amongst other things in his police statement, the defendant described his knowledge of the whereabouts of the lady and the reason that the lady went to Suva.

3. The defendant has not spent any time in remand.
4. The defendant is a first offender.
5. The defendant is 39 years old. He is a farmer. He is married with 3 children who are aged 17, 16 and 15 years respectively. The defendant looks after his mother and is the sole breadwinner. He is remorseful and seeks forgiveness.

LAW

6. The maximum sentence that is imposable by law on the defendant is up to 1 year imprisonment.

TARIFF

7. There is no established tariff and ultimately each case will determine its own sentence within the maximum imposable.

STARTING POINT

8. Considering the objective seriousness of your case, I select 21 days imprisonment as an appropriate starting point.

AGGRAVATING FEATURE

9. I do not see any aggravating factor.

10. Your sentence remains at 21 days imprisonment.

MITIGATION

11. I cannot accept that you are truly remorseful as you have pleaded not guilty.

12. However, I accept that you later recanted your lie and told police in your police statement later that you knew where the lady was.

13. You are a first offender.

14. You have a family to support.

15. This case has been looming over you since July 2014.

16. Your sentence is reduced to 10 days imprisonment.

SUSPENDED SENTENCE

17. I can suspend your sentence in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.

18. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.

19. Your sentence will be aimed at deterrence and to punish you adequately.

SUMMARY

20. There will be no further reduction in your sentence as you did not spend any time in remand.

21. You are sentenced to 10 days imprisonment.

22. I accept that you were requested by the lady not to reveal her whereabouts. You should have just told the police that you will not breach her confidence or you could have just refused to answer the enquiry by the police. There were other options other than lying to police. This is also your first offence and I am mindful of your family's needs.

23. I am inclined to suspend your 10 days imprisonment in whole.

24. It will be wholly suspended for the next 9 months.
25. Do not commit another offence punishable with imprisonment in the next 9 months or you risk this 10 days imprisonment held in reserve or waiting, being activated.
26. In addition, you are fined \$80 to be paid in 28 days. You default in paying this and you risk up to 4 days imprisonment.
27. We will recall this case on another date to review whether you have paid your fine. Your bail is extended until your fine is paid. If you have paid your fine by then, consider your obligations in this case discharged and your case closed.
28. 28 days to appeal.



Dated at TAVUA this 4th day of February, 2020.

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Lisiate T.V. Fotofili
Resident Magistrate