IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Labasa Criminal Appeal No.2 of 1978

KHAIRUL NISHA — Appellant
d/o Mohammed Muslim

v

REGINAM — Respondent

Mr. M. Sadiq for the Appellant
Mr. M. Jennings for the Respondent

JUDGMENT

The appellant, a young woman, was on 11th November, 1977 convicted in the Labasa Magistrate's Court on a charge of obstructing a Court Officer contrary to Section 133 of the Penal Code.

The particulars of offence were that on 18th November, 1976 at Lokutu, Bua, the appellant wilfully obstructed Chandrika Prasad s/o Ram Garib, a Court Officer, in the execution of a warrant.

The appellant appeals against her conviction and sentence.

The main ground of appeal against conviction is that the verdict and finding of the learned Magistrate is unreasonable and cannot be supported having regard to the evidence as a whole.

It is clear from the record of proceedings that the facts underlying the evidence of Chandrika Prasad s/o Ram Garib (P.W.1), a sheriff of Labasa, were the basis upon which the appellant was convicted. For the purpose of this appeal therefore it will suffice if I treated his evidence in chief as embodying the findings of fact of the learned Magistrate. The evidence ran as follows:

" I am sheriff outside Labasa for 5 years. (1972). I execute maintenance warrants. Serve summons (maintenance) inter alia.

On 18/9/76 I was trying to execute a warrant against Samsher Ali. I left at 8.00 a.m. He was at Lokutu, Bua, 70 miles away. He was working for a storekeeper Munshi. I went with Complainant's father Mohammed Khan as I didn't know defendant. We arrived at 2.00 p.m. by bus from Labasa. I went in the shop of Munshi with the warrant and showed Munshi the warrant. I asked where defendant was. He said he had left. I asked Mohammed Khan to wait outside to keep a lookout for Samsher Ali. I had been told

Samsher was hiding in the shop. I said I would make a search. He had no objection he said.

I went inside, there were ladies there and the accused in the dark. (Wife of Mohammed Kassim). I checked the rooms and accused came from kitchen direction. I asked her if anyone was there, after I had searched the other rooms. She said there is no one there. Why is the kitchen locked I asked from outside. She said I don't know I haven't done it. I opened the bolt, but the door was held shut from inside. I forced the door open and found Samsher Ali in there and arrested him.

I took him to the shop and asked owner if he knew that defendant had been hiding in his house. He denied knowledge. Accused was present and she is the daughter in law of Munshi the owner of the shop. We were all in the shop together Mohammed Khan said it was accused his daughter in law who had locked the shop. I saw you said Mohammed Khan. Accused had come from the kitchen door direction down the passage. No one else was in that part of the house with her."

The underlining is mine and draws attention to the prosecution contention that the appellant had lied to the sheriff and according to counsel for the respondent the prosecution relied on this piece of falsehood as constituting the alleged obstruction of the sheriff by the appellant. In his judgment the learned Magistrate confirmed this finding when he said:

"I also find the accused acted wilfully, by lying to the bailiff. She knew the bailiff was after the man, and she lied with intent to divert the bailiff."

The legal question which immediately arises is whether a lie told to a sheriff about a person whom he was interested in locating constitutes "obstruction" within the intendment of Section 133 of the Penal Code?

The learned Magistrate apparently relied on the definition in Stroud's Judicial Dictionary (4th Ed.) Vol.3 under the word "obstruct" where under numbered paragraph (16) the following definition is given:

"(16) 'Obstructing' the police is not confined to physical obstruction (Sykes v. Director of Public Prosecution (1966) A.C. 528) and includes anything which makes it more difficult for the police to carry out their duties (Hinchcliffe v. Sheldon (1955) 1 WLR 1207)."

The headnote to the case of Hinchcliffe v. Sheldon which is noteworthy reads:

" H., the son of the licensee of a hotel, returned to the hotel one night after permitted licensing hours and, seeing that police were watching the premises, knocked at the door and shouted warnings to his parents that the police were about. A police constable immediately knocked at the door, but some ten minutes elapsed before the licensee admitted him to the premises. No licensing offence was proved against the licensee, but H. was charged with obstructing the police in the execution of their duty, contrary to section 2 of the Prevention of Crimes Amendment Act, 1885, and convicted:-

Held, that the police had a right, under section 151 of the Licensing Act, 1953, to enter licensed premises at any time to see whether or not offences were being committed, and to detain them from so doing, as H. had done by giving a warning, obviously amounted to obstruction of the police in the execution of their duty and, therefore, justices were entitled to convict H.

Bastable v. Little [1907] 1 K.B. 59; 23 T.L.R. 38 and Betts v. Stevens [1910] 1 K.B. 1; 26 T.L.R. 5 distinguished."

It would appear from the full report of this case that there are possibly only two different situations, each of which may give rise to the offence of obstruction of a police officer (and undoubtedly for that matter a court officer). The first situation is where obstruction will only arise if an offence has been committed and a person acted in a manner which prevents or makes it difficult for a police officer to conduct his investigation of that offence. The second situation is where a police officer who has statutory power of entry into certain premises e.g. under the licensing legislation, finds his entry into such premises thwarted, even though no offence has been or known to have been committed as exemplified by the Hinchcliffe's case.

It appears that on the question of obstruction the learned Magistrate based his decision on the second situation (i.e. on Hinchcliffe's case) and in so doing I think he was in error.

In my respectful opinion on the facts of the present case neither situation was applicable. The sheriff in this case was given free and easy access to search the house in question and secondly he was not investigating an offence which had been committed but was merely seeking out a person on whom he wished to execute a warrant. In these circumstances the appellant's lie to the sheriff that no one was in the kitchen can hardly be regarded as amounting to obstruction in the sense that his task of locating the person had been rendered more difficult. Such was not the case. The sheriff and his helper on that day, Mohammed Khan, had at all material times full access to every part of the house under search. Therefore the appellant's part in being allegedly untruthful when questioned by the sheriff

was of marginal or incidental effect only. By the very nature of his work a sheriff would be most naive if he always assumed he would get full co-operation from all and sundry every time he ventures out with his warrants.

The definition given in Stroud on the same page under paragraph (17) which is of interest states:

> "(17) Refusal to answer questions put by the police (or unless arrested) to accompany them to the police station did not amount to obstructing the police contrary to section 51(3) of the Police Act, 1964 (Rice v. Connolly (1966) 2 Q.B. 414)."

The appellant could with complete impunity have refused to answer the sheriff's question. Conversely, if as in this case the appellant answered questions which proved to be mistaken whether deliberately on her part or not, she could hardly by that fact alone be held culpable under the criminal law. In these circumstances, I am satisfied that the charge brought against the appellant (and on which she was convicted) of obstructing a court officer was misconceived and cannot be sustained.

There is one further observation I must make arising from the treatment of the learned Magistrate concerning the evidence of P.W.3 whom he had declared to be a hostile witness for having given contradictory statements. Although the outcome of the appeal is not in any way affected by it, I think it necessary all the same that the matter be clarified. In his judgment in reference to the evidence of P.W.3 the learned Magistrate said:

> "I did accept his version of what happened in his statement to the police, as the truth."

In asserting that the learned Magistrate clearly misdirected himself. The position is that in a criminal case the previous statement of an hostile witness (or any other witness for that matter) cannot be substituted for his evidence in Court. It is as though he had given no evidence at all on the matter in issue (see R v. Golder, Jones and Porritt /1960/ 3 All E.R. 457).

The appeal is allowed. The conviction is set aside and the fine if already paid, is to be refunded.

Sgd. T.U. Tuivaga
JUDGE

Suva,
7th April, 1978