

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.: HAA 12 OF 2018**

**BETWEEN:**            **JAGAN NATH**

**Appellant**

**A N D:**                **STATE**

**Respondent**

**Counsel:**            Mr. B. Singh for Appellant  
                              Ms. J. Prasad for Respondent

**Hearing:**            16<sup>th</sup> March 2018

**Judgment:**        29<sup>th</sup> March 2018

**JUDGMENT**

**Introduction**

1. The Appellant filed this Petition of Appeal against the conviction for the offence of Perjury, contrary to Section 117 of the Penal Code and the sentence of three (3) months imposed against him by the Magistrate's Court in Suva on the following grounds, inter alia;

*Appeal against the Conviction;*

- i) *That the learned trial Magistrate erred in fact and law by not taking into account any evidence adduced by the defence.*
- ii) *The learned trial Magistrate erred in fact and law in failing to distinguished the process of administering oath by a Commissioner of Oath and the perjury.*

iii) *That the learned trial Magistrate erred in fact and law when he failed to balance the evidence of the prosecution with the evidence of the petitioner beyond reasonable doubt.*

***Appeal against the Sentence,***

i) *That the learned Sentencing Magistrate erred in fact and law that the sentence passed is harsh and excessive.*

2. On the 2nd of March 2018, the Court gave directions to the parties to file their respective written submissions, which they filed as per the directions. The matter was then set down for hearing on the 13th of March 2018. The hearing date had to vacate on the ground of non-availability of the record of the proceedings in the Magistrate's Court. Accordingly, the hearing was adjourned till 16th of March 2018. Having taken into consideration that the parties had filed their initial written submissions without the benefit of the record of the proceedings in the Magistrate's Court, the court ordered the parties to file further written submissions after they received the record of the proceedings. The learned counsel for the Appellant and the Respondent made their respective oral arguments and submissions during the hearing on the 16th of March 2018. Having carefully considered the record of the proceedings in the Magistrate's Court, the respective oral and written submissions of the parties, I now proceed to pronounce my judgment as follows.

**Background**

3. The Appellant together with another had been charged in the Magistrate's Court for the offence of Perjury on the ground that he had willfully made a statement in the Oath of Administration, stating that his deceased brother had only one son, knowing that information was false. The Appellant had then filed an application in the High Court of Suva for the letter of Administration for the estate of his deceased brother. He filed the said Oath of Administration in support of that Application, which is materially important in the Judicial Proceedings.

4. The Prosecution had adduced the evidence of six witnesses, including the Solicitor who had administered the oath of the Appellant in the Oath of Administration. The Defence had called three witnesses, including the two accused.

**Second Ground against the Conviction.**

5. For the convenience of determination, I first draw my attention to the second ground of appeal against the conviction. The learned counsel for the Appellant in his written submissions outlined his contention on the following grounds which I reproduce verbatim as follows:
  - a) *The person administering the oath failed to identify the deponents,*
  - b) *The person administering the oath failed to ask both the deponents as to what religion they belong to and thereon have their preferred holy book produced to be held in the accused hands,*
  - c) *Did the person administering the oath failed to explain the reasons for taking the holy book and that the deponents are deemed to tell the truth and then explained contents of all the paragraphs and whole body of the 2 pages that was to be attested to,*
  - d) *Did the person administering the oath ask if the deponents had understood the contents thereof and confirmed the same,*
  - e) *Did the person administering the oath have the deponents hold the holy book in such confirmation and thereafter ask them to sign,*
  - f) *Did the deponents sign followed by the person administering the oath signing himself.*
6. The second witness for the prosecution, the Solicitor who administered the oath of the Appellant, in his evidence, had explained the procedure that he usually adopted in administering oath. He has then testified that he adopted the same procedure for the Appellant, though he could not specifically and personally remember the Appellant. According to the evidence of the second witness, he had recently started his legal career, when he administered the oath of the Appellant. Therefore being a new professional, he was specifically careful and concerned in following correct procedure.

7. The learned Magistrate in paragraph five, six and seven of his judgment has discussed the evidence given by the second witness for prosecution and the version of the defence. Having discussed that, the learned Magistrate has concluded that the defence has failed to create a doubt that the second witness for the prosecution has failed to commit his professional duty. Therefore, the learned Magistrate has found that the second witness for the prosecution has adopted the correct procedure in administering the oath of the Appellant.
8. In view of the reasons discussed above, I find that the learned Magistrate has considered the evidence given by the prosecution and the defence, specially the evidence of the second witness for the prosecution, in determining that the prosecution has proven beyond reasonable doubt that there was a lawfully sworn statement. I accordingly find this ground of appeal against the conviction has no merits.

#### **First and Third Grounds against the Conviction**

9. First and third grounds against the conviction are founded on the contention that the learned Magistrate has failed to take into consideration the evidence adduced by the defence.
10. If the learned Magistrate believes the evidence given by the defence is true, then the appellant must be acquitted. If the learned Magistrate neither believes nor disbelieves the version of the defence, yet, it creates a reasonable doubt in his mind about the prosecution's case; he must find the appellant is not guilty.
11. Even if the learned Magistrate rejects the version of the defence that does not mean that the prosecution has established that the appellant is guilty for the offence. Still the learned Magistrate has to satisfy that the prosecution has established, on its own evidence, beyond reasonable doubt, that the Appellant has committed this offence as charged. (**Naicori v State [2017] FJCA 103; AAU0106.2013 (14 September 2017), Goundar v State [2015] FJCA 1; AAU0077.2011 (2 January 2015).**)

12. The learned Magistrate in paragraphs four, five and six of his judgment has discussed the evidence adduced by the prosecution and the defence in relation to the lawfully sworn statement. Having discussed the evidence, the learned Magistrate in paragraph five of the judgment has concluded that the defence failed to create a doubt that the second witness for the prosecution has failed to commit his professional duty. Moreover, at the end of paragraph seven of the judgment, the learned Magistrate has found that the second witness for the prosecution has adopted the correct procedure in administering the oath.
13. Accordingly, I am satisfied that the learned Magistrate has taken into consideration the evidence adduced by the defence in his judgment. Having taken into consideration the whole of the evidence adduced during the course of the hearing, the learned Magistrate has concluded in paragraph seven of the judgment, that the prosecution has proven the physical element and the fault element of the offence beyond reasonable doubt. Accordingly, I find the first and third grounds of appeal against the conviction have no merits.


#### **Appeal against the Sentence**

14. The learned Magistrate has correctly identified the prescribed sentence for Perjury under Section 117 of the Penal Code as seven years of imprisonment period. He has then discussed the sentencing approaches in England for the offence of Perjury. Having discussed that, he has selected five months for the starting point based on the objective seriousness of the offence. The learned Magistrate has given two months discount for the good character of the Appellant, reaching the final sentence of three months.
15. The learned Magistrate has not considered any aggravating factors in this offending, which he should have considered pursuant to Section 4(2) (j) of the Sentencing and Penalties Act. Instead, the learned Magistrate has considered the aggravating circumstances of the offending in order to determine whether to suspend the sentence or not, pursuant to Section 26 of the Sentencing and Penalties Act. In doing that, the learned Magistrate has considered the effects of this false statement in the judicial

proceedings and also on the parties concerns. The learned Magistrate has then concluded that this was a deliberate and planned disturbance to the administration of justice, therefore, no reasons to suspend the sentence. I find the learned Magistrate has not considered these aggravating circumstances in his sentence in order to properly reach to a sentence which reflects the seriousness and the gravity of the offending. Hence, I find this sentence is actually lenient, rather harsh and excessive.

16. Accordingly, I do not find any merits in the ground against the sentence.
17. In conclusion, the appeal against the conviction and the sentence is disallowed and dismissed.
18. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
**Judge**

**At Suva**  
29<sup>th</sup> March 2018

**Solicitors**  
Babu Singh & Associates for the Appellant.  
Office of the Director of Public Prosecutions for the Respondent.