

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL APPEAL NO. HAA 014 OF 2021

BETWEEN : **MACA BALEINAMOTO**

AND : **STATE**

Counsel : Mr S Raramasi for the Appellant
Ms S Latu for the State

Date of Hearing : **5 April 2022**

Date of Judgment : **28 July 2022**

JUDGMENT

[1] The appellant is a former police constable. She was charged with attempt to defeat the course of justice. At the time she was stationed at Savusavu Police Station. She was convicted after trial and sentenced to 6 months imprisonment. She appeals her conviction only.

Evidence led at trial

[2] At trial, the prosecution led evidence from five witnesses. The appellant gave evidence on her defence.

[3] Maikeli Dawai gave evidence that on 14 March 2017 he was at a lodge in Savusavu when a team of police officers from Labasa arrested him after carrying out a raid. The police also seized his mobile phone before placing him in the police vehicle. While he was being transported to Labasa Station his mobile phone rang. A police officer received the call and told him to speak but he refused to speak. After the call ended he revealed the identity of the caller to the police. He told the police that

the caller was the appellant. He said that the appellant was his former partner before she joined the Police Force.

- [4] Sergeant Lal investigated the appellant's case. He tendered the appellant's caution interview and the phone call records of the appellant and Maikeli Dawai. In her caution interview, the appellant admitted that Maikeli was her former boyfriend and that she had saved his mobile number on her phone under the name 'Mike'. Maikeli's phone contact was 9672234 while the appellant's phone contact was 9080636. Maikeli in his evidence confirmed this was his phone number while the appellant confirmed her phone number in her caution interview.
- [5] In her caution interview, the appellant admitted calling Maikeli Dawai on 14 March 2017 at about 5.21 pm but she denied uttering any words on the phone. She did not give clear reasons for calling Maikeli but said that on occasions she had called him to either get a quotation from him or to complain about his wife.
- [6] Sergeant Bull gave evidence that when Maikeli's phone rang he saw the name Maca (Ovisa) as the caller. He received the call and put it on speaker for Maikeli to speak. When Maikeli responded saying 'lo', the caller responded saying "Ratau sa lako yani", meaning, "they are on their way". Sergeant Bull recognized the appellant's voice as she was his colleague. He responded saying 'O cei' and that's when the caller switched off the phone.
- [7] Inspector Drauna led the team that arrested Maikeli. His evidence was that Maikeli was wanted for an illicit drugs case. He was in the vehicle when Maikeli's phone rang. He too recognized the caller by her voice. He said that the caller was the appellant. He had known her for 16 years. When the phone was put on the speaker, the caller uttered the following words 'Qore ratau sa lako yani', meaning, 'they are coming'.
- [8] The final witness for the prosecution was the exhibit writer, WPC Reshma Prasad. Her evidence was that Maikeli's mobile phone got lost from the exhibit room and the former exhibit writer was terminated from the Police Force for losing the exhibit.

[9] The appellant chose to give evidence. Her evidence was that on 14 March 2017 she did give Maikeli a call on his mobile phone but when he did not answer, she ended the call. She said that she returned Maikeli's call as he had earlier called her regarding his report of damage to his windscreen. She said that when she called Maikeli she did not speak with him.

Consideration of grounds of appeal

[10] The appellant has advanced eight grounds of appeal.

[11] The first complaint based on identification evidence is misconceived. Identification was not an issue at the trial. The appellant in her evidence admitted calling Maikeli but she denied uttering the words that suggested she was informing Maikeli about the police raid. Apart from two police officers recognizing the appellant's voice Maikeli also confirmed that the caller was the appellant. The witnesses personally knew the appellant. Dock identification did not add anything to the prosecution case. There is no error in the learned magistrate's finding that the caller was the appellant and not someone else.

[12] The second complaint is that the charge was defective as it did not disclose an offence of an attempt to defeat justice.

[13] The charge was framed as follows:

Statement of Offence

Attempting To Defeat Justice: Contrary to Section 190 (e) of the Crimes Act of 2009.

Particulars of Offence

Maca Baleinamoto on the 14th day of March 2017 at Savusavu in the Northern Division attempted to obstruct, prevent, pervert or defeat the course of justice.

[14] Section 190 (e) of the Crimes Act defines the offence as follows:

A person commits a summary offence if her or she-

In any way obstructs, prevents, perverts or defeats, or attempts to obstruct, prevent, pervert or defeat, the course of justice.

[15] Section 58 of the Criminal Procedure Act requires every charge to contain two essential elements:

- (i) A statement of the specific offence with which the accused is charged.
- (ii) Such particulars as are necessary for giving reasonable information as to the nature of the offence charged.

[16] Clearly, the charge in this case complied with section 58 of the Criminal Procedure Act. The offence was an attempt to defeat the course of justice and the particulars gave reasonable information as to the nature of offence.

[17] The appellant was represented by counsel at the trial. She took no objection to the charge or that she did not know the nature of the offence she had to defend. The charge was not defective and the complaint based on defective charge is dismissed.

[18] The third complaint is that interference with police investigation do not constitute an offence of attempt to defeat the course of justice.

[19] The police was carrying out their statutory duty to arrest Maikeli for a crime. The prosecution led evidence that Maikeli was wanted for an illicit drugs case. The prosecution case against the appellant was that she attempted to obstruct, prevent, pervert or defeat the course of justice by calling and informing Maikeli regarding his potential arrest. The words uttered by the appellant that 'they are on their way' was construed as a tip off for Maikeli to avoid arrest for his alleged illicit drugs case.

[20] An act which has a tendency to deflect the police from prosecuting a criminal offence or instituting disciplinary proceedings before a judicial tribunal or from adducing evidence of the true facts is an act which tends to pervert the course of justice and, if done with intent to achieve that result, amounts to an attempt to pervert the course of justice. It impairs the court's capacity to do justice in the actual circumstances of the case. As the High Court of Australia said in *R v Rogerson* [1992] HCA 25; (1992) 174 CLR 268; (1992) 60 A Crim R 429 (17 June 1992) said:

The gravamen of the offence of an attempt to pervert the course of justice is an interference with the due exercise of jurisdiction by courts and other competent judicial authorities. As the courts exercise their necessary and salutary jurisdiction to hear and determine charges of offences against the criminal law only when their jurisdiction is invoked, an act which has a tendency to deflect the police from invoking that jurisdiction when it is their duty to do so is an act which tends to pervert the course of justice. Subject to a limited discretion not to prosecute, it is the duty of the police to prosecute when offences are committed.

[21] The fourth complaint is that the voice identification of the appellant by the two police officers should not have been allowed. Both police officers knew the appellant for a long period of time. They recognized her voice. Even Maikeli recognized that the caller was the appellant. The appellant in her evidence admitted calling Maikeli but she denied speaking the alleged words. The issue was not identification but credibility. The learned magistrate believed the two police officers that the appellant spoke and said words that had the effect of informing Maikeli that he was about to be arrested. The complaint that voice identification should not have been allowed has no merits.

[22] The complaint made under grounds five and six is that there was no independent evidence to verify that the appellant made the call to Maikeli using her mobile phone. The appellant in her evidence admitted that she had made the call using her mobile phone. It was not necessary for the prosecution to further authenticate that the caller was the appellant in light of her admission.

[23] The seventh complaint is that the prosecution had not proved the charge beyond reasonable doubt. This complaint has no merits. The learned magistrate expressly stated that he was satisfied beyond reasonable doubt of the guilt of the appellant based on the evidence led by the prosecution.

[24] The final complaint is that the learned magistrate did not analyze the evidence before convicting the appellant.

[25] The learned magistrate gave written judgment in which he had set out the law, the evidence and analysis of the evidence, before making a finding of guilt. This complaint has no merits.

Result

[26] The grounds of appeal have not been made out.

The appellant's conviction is affirmed and her appeal is dismissed.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Raramasi Law for the Appellant

Office of the Director of Public Prosecutions for the Respondent