

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 76 - 2016

STATE

-v-

HARI NARAYAN

For Prosecution : IP Lenaitasi [Police Prosecution]
Accused : Mr Padarath [Samuel K. Ram]
Trial Date : 12th day November, 2018
Date of Judgment : 28th day of January 2019
Date of Sentence : 2nd day of April 2019

SENTENCE

BACKGROUND

1. Having pleaded not guilty and after a trial, the court has found the defendant guilty of the following charge (amended on the 28th of June 2016) :

Statement of Offence

PERJURY: Contrary to section 176 (1) of the Crimes Act of 2009.

Particulars of Offence

HARI NARAYAN on the 13th day of February 2015, at Ba Magistrate Court, Ba in the Western Division whilst being under oath, wilfully made a statement material in the proceeding which he knew to be false.

2. The defendant first appeared on the 17th of February 2015 and was remanded in custody. He was granted bail on the 20th of February 2015. He has been on bail ever since.
3. The defendant was a Respondent in a Magistrates' Court family case in relation to an application that he pay spousal maintenance. An order was granted in favour of the

Applicant in that application. A subsequent application was then made for a stop departure order against the defendant. In relation to this application and when the defendant was under oath and was asked by the Magistrate, the defendant denied that he had a new passport. He then provided his old passport to the court. Later, the court after enquiry with the immigration department was informed that the defendant was issued a new passport. This new passport was issued approximately 2 years before the defendant lied to the Magistrate.

4. The defendant is a first offender.
5. He is 64 years old. It is submitted that he suffers from diabetes and high blood pressure. He looks after his sickly wife.
6. Counsel has filed written mitigation in support of the defendant. It is submitted that there is no aggravating factor. That the defendant panicked and that is the reason why he said that he did not have a new passport. The case merits a non-custodial sentence.
7. Counsel has referred the court to the case of **Nath v State** [2018] FJHC 237; HAA12.2018 (29 March 2018). The Appellant appealed his conviction and sentence of 3 months imprisonment to the High Court. It was a conviction and sentence for perjury contrary to the repealed **Penal Code Cap 17**. The maximum sentence is 7 years imprisonment. The Appellant was found guilty after trial by the Magistrates' Court for filing a false Oath of Administration in his pursuit to obtain a letter of administration in relation to his deceased brother's estate. The Magistrate selected a starting point of 5 months imprisonment and reduced it to 3 months imprisonment based on the good character of the defendant. The Magistrate refused to suspend the sentence as the court was of the view that the act was planned and deliberately aimed at disturbing the administration of justice. The High Court on appeal, found that the sentence was lenient and dismissed the appeal.

LAW

8. The maximum sentence that is imposable by law for the offence of perjury is up to 7 years imprisonment.

TARIFF

9. I am unable to find any sentencing tariff for this offence.
10. As seen in **Nath**, 3 months imprisonment maybe appropriate bearing in mind the view by the learned Judge in that appeal that that sentence was lenient.

11. Literature such as Principles of Sentencing (2nd Edition) D.A. Thomas advocate that for offences such as perverting or conspiracy to pervert the course of justice, even perjury should normally attract immediate custodial sentences. The length of that can be determined by looking at nature of the offence and the duration the defendant persisted in it.

STARTING POINT

12. Considering the circumstance of this case, an 8 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

13. I agree with counsel, I don't see any aggravating feature in this case and so I will not increase the sentence.

MITIGATION

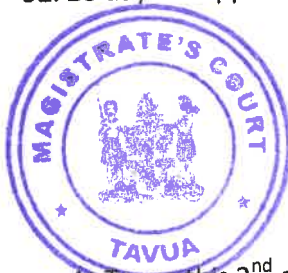
14. There will be some reduction for having a past good history.
15. The defendant is elderly.
16. I accept that the defendant has some health problems but I don't think this is too serious.
17. I don't accept that he is remorseful though. For instance, the defendant's continued explanation that his lie is attributable to him panicking when giving evidence before the Magistrate is pathetic to say the least.
18. The defendant has appeared in that family proceeding at least twice before telling his lie on the 13th of February 2015. He would already have been familiar with the court setting. More importantly, the defendant was not asked a complicated question that would require a complicated answer.
19. I accept that the defendant has a wife to look after.
20. This case too has been looming since February 2015.
21. I reduced the sentence to 4 months imprisonment.

SUSPENSION

22. I can suspend the 4 months imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the Sentencing and Penalties Act 2009.
23. 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 the sentence.
24. The sentence will be aimed at deterrence and to punish the defendant adequately.

SENTENCE

25. You are sentenced to 4 months imprisonment.
26. You have spent 3 days in remand.
27. I consider this time in remand as time served.
28. You have 3 months and 25 days remaining.
29. I am inclined to suspend your sentence and it will be suspended only in part. I will suspend 3 months imprisonment for the next 18 months.
30. Commit any other offence in the next 18 months and this term held in waiting maybe activated.
31. You will serve 25 days imprisonment, immediately.
32. 28 days to appeal.



At Tavua this 2nd of April 2019

LISIATE T.V FOTOFILI
Resident Magistrate