IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 81 of 1978

BETWEEN: REGINA Appellant

and

GIDEON PERMAL s/o Permal Respondent

Mr. M. Jennings, Counsel for the Appellant

JUDGMENT

The appellant pleaded guilty to four charges of perjury contrary to Section 109(1) of the Penal Code and was fined $20, $20, $35, and $20 on counts I, II, III and IV respectively.

The facts are that he had received a notice for double-parking his motor lorry. He did not appear in Court and was convicted. Later he appealed to set aside his conviction and falsely swore that

"(i) he was not the driver;
(ii) that a police officer did not book him;
(iii) that he received no notice to attend court;
(iv) that he did not double park."

His conviction was set aside by the magistrate and a frosh hearing date fixed. The appellant again failed to attend and evidence given in his absence proved the offence and he was again convicted.

Following this he was charged with four counts of perjury. Each one of the foregoing statements (i), (ii), (iii) and (iv) was made the basis of a separate charge of perjury. The appellant only gave one account on oath but it contained the above untrue statements. In my view, and Crown Counsel concurs, there should only have been one charge of perjury. The gist of the offence is taking an oath and then whilst on oath giving evidence which is false. In letting four lies in a single statement to the same magistrate about the same incident he did not commit perjury four times. He did not enter the witness box four times and take four separate oaths, and tell a

separate lie each time in a separate proceeding.

I would agree the Section 109(1) of the Penal Code is somewhat misleading when it describes perjury as making a statement which he knows to be false after being sworn in judicial proceedings. One may think that each lie is a separate statement but that is not the correct approach. If the section said that a person who tells a lie commits perjury one could more readily accept that each lie would be the basis of a separate charge. However, it refers to a false statement and what the witness says in the witness box is a statement of evidence; he does not make several statements of evidence; he only makes one statement of evidence but it may contain a number of untruths concerning different matters.

The count should have been drafted to read somewhat as follows

> "A. B ----------in judicial proceedings ----------
> ---------knowingly falsely swore that "I was not the driver; that a police officer did not report me; that I was not double parked;" etc.."

All the alleged untruths are set out in the one count. At the trial it is sufficient to prove any one of the untruths in order to justify a conviction.

It is concisely set out in Russel on Crime Vol. I, 12th Edn. p.302 as follows:-

> "It should be noted that the essence of perjury is that the offender has proved false to the oath which he has sworn rather than that he has made one or more false statements. Any false statement which he has made constitutes the evidence upon which the charge that he had betrayed his oath is based (or 'assigned') and it is termed on assignation of perjury; however many assignments there may be on one oath which has been sworn there is only one perjury."

In the exercise of my powers of revision I set aside the four convictions for perjury and substitute therefore one conviction for perjury which would contain the four above assignments of perjury. I drew the appellant's attention to what I proposed doing.

The total of the fines imposed amount to $95.00 and the Crown contend the punishment is not appropriate to such a serious offence.

Crown Counsel submitted that this was not a lie told under pressure but a pre-conceived intention to mis-lead the magistrate.

Courts have consistently stated that perjury is the kind of offence which demands a custodial sentence. In R v. Davies 1974, 59 Cr. App. Rep.311, the Court stated that it was prepared to uphold a sentence of imprisonment for perjury in judicial proceedings in whatever capacity the witness appeared.

In R. v. Demaine 1971, Cr. L. Rev. 110 the accused pleaded not guilty to driving whilst disqualified and called evidence to show that he was not the driver. When charged with perjury he admitted the lies. He received two years' imprisonment.

False evidence given to a court even by way of mitigation is seriously regarded. Thus in R v. Davies 1974, Cr. L. Rev. 613, the father of two sons convicted in a Magistrate's Court falsely said in mitigation that his sons were in regular employment. Although this was a last minute perjury it was deliberate. The Court of Appeal upheld a sentence of 12 months' imprisonment.

In R v Lal 1978 Cr. L. Rev. 52 the accused had been sued in a County Court for the price of goods. He falsely said he had purchased some of them from a supplier other than the plaintiff. The fact that the judge did not believe him and was not affected by the untruths was no mitigation. The Court of Appeal observed that perjury was a serious matter and upheld a sentence of 9 months.

An accused who commits perjury in his own defence is not immune as revealed in R v. Kayode 1978 Cr. L. Rev. 302. Kayode charged for theft and false accounting explained a credit entry in his bank account as being the proceeds of the sale of his car and he produced a receipt to prove it calling E in support. Sentence of 18 months was upheld.

In the instant case the accused has asked that his fine be enhanced rather than replaced by imprisonment. As the authorities indicate the offence of perjury is very serious. The course of justice is frequently interfered with by witnesses who are untruthful.

The sentences are set aside and a custodial sentence of 9 months' imprisonment based on one conviction for perjury is substituted therefore. The fines if paid shall be refunded.

LAUTOKA,
September, 1978.

(Sgd.) J.T. WILLIAMS
JUDGE