IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Appellate Jurisdiction
Criminal Appeal No. 18 of 1978

BETWEEN:

INOSA RATULEVU — Appellant

-and-

R E G I N A M — Respondent

Mr. D. Williams, Counsel for the Respondent
Appellant in Person.

JUDGMENT

The appellant pleaded guilty to perjury on 22/3/78 and received 18 months' imprisonment. He appealed against the sentence and I formed the opinion that the facts would not support the charge.

For convenience I set out the charge and particulars:

Statement of Offence

"Perjury: Contrary to section 109(1) of the P.C., Cap.11.

Particulars of Offence

"INOSA RATULEVU on 28th day of April 1976 at Lautoka Magistrate's Court, having been lawfully sworn as a witness in judicial proceedings namely Criminal Case 180/76 R v. Marika Yabaki and Others charged with murder contrary to section 228(1) P.C. did wilfully make a statement which he knew to be false namely that -

"I deny that I said in my statement that I ran towards them to see what was actually happening and that I stood and watched what was going on."

In the preliminary inquiry the prosecution alleged that Marika Yabaki and others kicked the deceased to death.

The police obtained statements from alleged eye witnesses including the appellant. His statement, Ex.A, shows that he was waiting for transport shortly after 12

midnight when he saw a fight near Mosese's house; that he went to within 12' of the disturbance; that he saw Semisi strike the deceased who slipped and fell whereupon others kicked him as he lay on the ground; that 13 men repeatedly kicked the deceased; that he could identify them although he only knew the names of some; that he was afraid to assist the deceased because he was greatly outnumbered; that he saw the deceased being carried to the verandah of a nearby house.

At the preliminary enquiry he denied informing the police that he had approached the scene and witnessed the incident from nearby. As indicated (supra) that denial was the foundation of the perjury charge.

When charged before the magistrate for perjury he said,

> "It is true I did say these words to the Inspector when he interviewed me but what I told the Inspector was false. In Court I told the magistrate that I had not said these words."
> I plead guilty."

The appellant was then convicted and sentenced.

It is clear that the accused lied to the magistrate conducting the preliminary inquiry when he denied informing the police that he had seen the incident. Was that lie material to the proceedings? I am inclined to the view that it was not.

I informed learned Senior Crown Counsel that I proposed to review the perjury proceedings and indicated my views generally. During the review Crown Counsel stated that he had not found any assistance from decided cases. My own researches brought forth little more. Accordingly, I am, to a great extent relying upon my own interpretation of whether the accused's untruth was material to the preliminary inquiry. One must remember that the accused's evidence that he had not told the police he had seen

what happened is not the same as saying that he had not in fact seen what happened.

The magistrate was recording what the witnesses said to him rather than what they had said to the police but one would expect little difference in the two versions. The accused did not say to the magistrate, "I saw nothing", his untruth was "I did not tell the police that I saw what happened." Those words could not help the magistrate to decide whether anyone had attacked the deceased or not. Therefore I would regard them as immaterial and although untruthful they do not constitute perjury. A statement to the police is not evidence and in denying that he made it the appellant was not contradicting evidence he had given. He was not lying about what happened at the scene, which of course could be perjury. He was not giving a different version of the incident from that which he had given the police.

Had he said "A did not kick B on the head" that would be material evidence of A's innocence and he would be contradicting his police statement pointing to A's guilt. However, that in itself would still be no proof that his statement in Court was untrue, and if, when charged with perjury, the appellant then said, as he did in this case, what I told the police was unture that would be no evidence of perjury. Lies told to the police do not constitue perjury, nor do lies told to the Court unless they are material.

In Russell on Crime, 12th Edn., Vol.I, at p. 295 the learned author says:-

> "At common law it was held that the essence of perjury is its tendency to mislead in proceedings relative to a matter judicially before the court. Consequently the false evidence must be relevant to a question already raised in the proceedings; for if it is wholly foreign to the purpose or altogether immaterial and neither in any way pertinent

to the matter in question,

nor likely to induce the jury to give readier credit to the substantial part of the evidence it cannot amount to perjury."

The fact that the appellant made a statement to the police was not relevant to the preliminary inquiry. It is what the accused says in Court that is material not what he has said to the police. Evidence directed towards the credibility of a witness may be material. Therefore if a witness untruthfully impeaches his own or another witness's credibility he may be guilty of perjury, if the evidence thereby impeached was material to the issue. If it was not material to the issue then his credibility is immaterial. In the instant case the appellant untruthfully denied making a certain statement to the police; that denial was untruthful thereby reflecting against the appellant's own credibility, but the untruth did not condemn or support the allegation of murder. Therefore his untruthfulness was not material inasmuch as his evidences from any point of view.

If a prosecution witness, contrary to his police statement, favours the accused it is wise to cross-examine him on his previous inconsistent statement so as to show that as a potential defence witness he is worthless.

Had the appellant said in evidence "I did go to the scene and I saw what happened and I can say that no one kicked the deceased" that statement would be material and if it could be shown that he must have seen the deceased being kicked then this coupled with his police statement would be evidence of perjury. However, to say "I did not tell the police that A kicked the deceased", is not evidence that the deceased was or was not kicked by A. That simple denial merely raises an issue as to whether the appellant did make a statement to the police But the question whether he did make such a statement could not tilt the scales one way or the other in showing that the deceased was kicked and if so who kicked him. Had the prosecutor extracted from the appellant positive statements of what

he had in fact seen, instead of what he had told the police he had seen, those positive statements may have been material and may have been the basis for a charge of perjury.

The accused's plea of guilty was obviously tendered in error and with respect I would say that it was erroneously accepted by the magistrate. The conviction is quashed and the sentence is set aside.

The accused is serving a term of imprisonment for another crime and has not been adversely affected.

LAUTOKA
5th May, 1978.

(sgd.) J.T. Williams,
JUDGE