The State v Shailendra Singh

Fiji High Court, Suva
24th, 31st January 2013

Cr. Revisional Case
HAR001.13
[Navua Traffic Case 3424 of 2011;
Navua Cr. Case 123 of 2011]

Gates CJ

JUDGMENT

Mr. A. Singh for the State
Accused in Person

[1] On 15th February 2012 the Accused had been convicted after trial before the Resident Magistrate at Navua Magistrates Court of a single count of Improper Use of Mobile Communications contrary to Regulations 51 and 87 of the Land Transport (Traffic) Regulations 2000. He was said to have been talking on a mobile phone, holding the phone in his right hand and at the same time holding the steering wheel with his left, whilst driving the vehicle along a public road.

[2] The maximum penalty for this offence was a fine of $500 or 3 months imprisonment. On 21st May 2012 the Accused was fined $150, in default of which he was to serve 20 days imprisonment.

[3] The Accused lives in Nausori where he is a shopkeeper. The case was, either mentioned or proceeded with, on 12 separate occasions at Navua, each requiring the Accused's attendance. On the second appearance, after disclosures had been ordered, the Police Prosecutor said he was appearing without the file. He said he had sent the file to Naleva. It is not clear what this meant. Disclosures could not be given that day. There was however only one witness for the prosecution, a police motor cyclist. The hearing was fixed for 2.11.11.

[4] On 2.11.11 the hearing could not proceed since the prosecution's witness was giving evidence in Sigatoka Magistrates Court that day. Eventually the case was listed for hearing on 17.1.12 when the trial did proceed. The Accused had attended at all times up till then, but did not attend for judgment on 15.2.12. A bench warrant was duly issued, though suspended. The

Accused subsequently produced a medical certificate covering the relevant court date, which was accepted.

[5] The Accused attended on 15th March 2012 and when judgment was delivered. Mitigation was put off for another day, the 16th April 2012. It was a pity that on such a minor matter the mitigation could not have been heard on the same day as judgment was delivered. The Accused's time would have been saved, and the case sooner concluded.

[6] Eventually the Accused paid his fine, exited the court system, and the case was closed.

[7] After the failure by the Accused to attend on 16.4.12 the Magistrate had fixed a fresh bail which was to be in the Accused's own recognizance of $500.

[8] The Accused was later charged with absconding bail contrary to section 26 (1) of the Bail Act 2002 for that non-attendance.

[9] The charge read:

> "*Statement of Offence [a]*
>
> ABSCONDING BAIL:- Contrary to Section 26(1) of Bail Act Number 26 of 2002.
>
> *Particulars of Offence [b]*
>
> SHAILENDRA SINGH, on the 18th day of May 2012, at Navua in the Central Division, being the accused person released on bail to appear at Navua Magistrate Court on the 16th day of April 2012, absconded bail and failed to surrender to custody without reasonable cause."

[10] Why was the date of the offence given as the 18th May 2012? The date he was obliged to appear in court was 16th April 2012 not 18th May 2012. The offence of absconding had therefore occurred when the Accused failed to appear on the due date next for court which was 16th April 2012. On 16th April 2012 he was obliged by the terms of his bail to surrender to custody on that date. He did not commit an offence subsequent to that date. If he did not attend on the fixed

date, he cannot commit the date on a later date though he can of course be arrested on the later date. The charge as drafted is misconceived and is therefore a nullity,

[11] The charge of absconding is set aside and quashed. If the fine of $500 has been paid it is to be returned to the Accused forthwith.

[12] By way of guidance, sentencing courts should try to maintain a correlation between the gravity of the substantive offence and the absconding bail matter. If the offence was a comparatively minor one and attracted a fine of $150, the bail absconding offence should have attracted a fine in the range $100-$200. It was of some significance and relevance that attendance by the Accused was burdensome in this case. But his many attendances showed an intention to respect the court and to attend. No explanation is provided in the record as to why he had not attended on the two occasions. We can infer one non-attendance was for medical reasons but there is no account sought or offered for the second failure.

[13] As far as is possible in circumstances such as these, courts should strive not to inconvenience an Accused, parties or witnesses by an excessive number of adjournments in minor matters. The transport costs of attending and the loss of business time must far have exceeded any fine applicable for the offending.

[14] In addition there was no Summary of Facts handed up or recorded as having been given orally by the Police prosecutor. There were none in the original file either. There were therefore no facts to have been accepted by the Accused. Properly the facts should establish the elements of the offence which should be accepted by the Accused to confirm the plea of guilty. If not accepted the Magistrate has to proceed on the basis of a not guilty plea.

[15] In the result, I exercise revisionary powers pursuant to section 260(1)(a) of the Criminal Procedure Code, and order:

1. The conviction of the Accused on the charge of absconding bail [Navua Cr. Case 123 of 2011] is to be set aside and an acquittal substituted.

2. The sentence is quashed.

3. If the fine has been paid, it is to be returned to the Accused.

A.H.C.T. Gates
Chief Justice

Solicitors for the State : Office of the Director of Public Prosecutions, Suva
Accused in Person

cd