



*Particulars of Offence (b)*

*JONE DAKAIBITU NASARA on the 27<sup>th</sup> day of July, 2019 at Savusavu in the Northern Division, gave false name as “JONE NASALA” and false address as Nakelo, Tailevu knowing it to be false to a Police Officer namely Inspector **GYAN SINGH** of Savusavu Police Station in due execution of his duty with intention to cause the Police Officer to do or refrain from doing an act authorized by law.*

2. The Appellant was produced before the learned Magistrate on the 30th of July 2019. The Appellant pleaded guilty to the offence on the same day. The learned Magistrate then convicted and sentenced the Appellant for a period of fourteen (14) months imprisonment with a non-parole period of eight (8) months. Aggrieved with the said conviction and the sentence the Appellant files this appeal on the following grounds *inter alia*;

**Appeal against the Conviction**

- (i) *That the Learned Magistrate erred in law in fact when accepted to convict the Appellant (myself) upon my guilty plea as charged with do not nature the involvement of the Giving False Information to Public Servant (Q. 290 in answer in caution interview it is tendered and marked).*
- (ii) *That the Learned Magistrate erred in law in fact if he sees my caution interview most of them were told or given that I will answer in the Court and I never knew about this is law that I will be convicted at other point though it would be the warning of a suspended sentence for saving Court's time. If I know it would be like the situation I would have seen a private lawyer or a Legal Aid lawyer who can represent from my side.*
- (iii) *That the Learned Magistrate erred in law and in fact to accept the Appellant guilty plea to guide (him). Magistrate to conclude that the Appellant intended to commit the offence when there was no word of intention is found in the*

*caution interview statement therefore there was a grave miscarriage of justice miscarried in the Court of law.*

3. The three grounds of appeal against the conviction are based upon the contention that the learned Magistrate has erroneously failed to take into consideration the caution interview of the Appellant. The Appellant contents that the caution interview has not revealed that the Appellant had an intention to give a false information.
4. Section 174 of the Criminal Procedure Act has provided the procedure of recording the plea of guilty of the accused in the Magistrate's Court. Section 174 (1), (2) and (3) of the Criminal Procedure Act states that:
  - i) *The substance of the charge or complaint shall be stated to the accused person by the court, and the accused shall be asked whether he or she admits or denies the truth of the charge.*
  - ii) *If the accused person admits the truth of the charge, the admission shall be recorded as nearly as possible in the words used by the accused, and the court shall convict the accused and proceed to sentence in accordance with the Sentencing and Penalties Act 2009.*
  - iii) *If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as provided in this Decree.*
5. The record of the proceedings in the Magistrate's Court clearly states that the Appellant was properly read and explained the charge and then the summary of facts, which the Appellant had admitted in the Court. Section 174 does not require the learned Magistrate to take into consideration the caution interview of the Appellant. As a result of that, I do not find any error in the conviction. Hence, I find no merits in the three grounds of appeal against the conviction.

## Appeal against the Sentence

(i) *That the Learned Magistrate erred in law and in fact in not taking into full consideration the provision of the sentencing and the penalties decree of 2009 when sentencing the Appellant.*

6. The ground of appeal against the sentence is formed on the contention that the sentence is harsh and excessive.
7. The learned Counsel for the prosecution in her supplementary written submissions conceded the sentence is harsh and excessive. The learned Counsel in her supplementary submission has discussed the sentencing approaches adopted by the Courts in Fiji in relation to the offence of Giving False Information To Public Servant and found the sentence of a period of fourteen (14) months imprisonment is harsh and excessive.
8. According to the summary of facts, the police team had gone to the village of the Appellant in order to conduct a raid to arrest a wanted suspect. While searching the house of the Appellant, the police had asked the name of the Appellant, for which he had given a false name.
9. The learned Magistrate has taken into consideration the following case authorities in order to guide himself about the sentencing practices. They are, Balaggan v State [2012] FJHC 1032; HAA031.2011 (24 April 2012), State v Raitekiteki - Sentence [2016] FJHC 1105; HAC285.2015 (7 December 2016), Matavura v State [2012] FJHC 1365; HAA19.2012 (11 October 2012), Fiji Independent Commission Against Corruption v Padarath [2016] FJMC 31; Criminal Case 594.2011 (9 March 2016). Having referred to the above judicial precedents, the learned Magistrate had found 24 months as the starting point based on the objective seriousness of the offence. However, the learned Magistrate has not specifically stated what are the factors that he had taken into consideration as objective seriousness of the offence.

10. The factual backgrounds in **Balaggan (supra)** and **Padarath (supra)** are different to the factual background of this matter. In **Balaggan (supra)** the accused made a false allegation of sexual harassment against the lawyer who represented her in another criminal matter. In **Padarath (supra)** the accused made a false information to the Director Immigration regarding the status of a foreigner. In **Balaggan (supra)** the Court has selected 24 months as the starting point.
11. However, in this matter the Appellant had given a false name to the police when the police inquired about his identity. The Appellant had not involved in any other crime when he was questioned by the police. Therefore, the objective seriousness, that the learned Magistrate had taken into consideration in order to select 24 months as the starting point, cannot be the same as of the case of **Balaggan (supra)**.
12. In **State v Raitekiteki (supra)** the High Court has sentenced the accused to a period of six months imprisonment for giving a false name to a police officer when he was arrested for a case of Aggravated Robbery and Rape. In **State v Mere Vula (HAA 83 of 2017)** the High Court affirmed the sentence of six months for giving a false name to a police officer.
13. In view of the above discussed judicial precedents, a sentence of fourteen (14) months imprisonment is harsh and manifestly excessive for an offence of giving a false name to a police officer. Since the Appellant had already spent nearly five (5) months in prison, it would unjust to impose any alternative punishment. I accordingly, quash the sentence imposed in the Magistrate's Court and discharged the appellant forthwith without any further punishment.
14. The appeal against the sentence is allowed.

15. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
Judge

**At Suva**

23<sup>rd</sup> December 2019

**Solicitors**

Appellant In Person.

Office of the Director of Public Prosecutions for the Respondent.