

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 48 of 2022

BETWEEN : **SALOTE TAGALOA**

APPELLANT

A N D : **THE STATE**

RESPONDENT

Counsel : Mr. M. Naivalu for the Appellant.
: Ms. S. Naibe for the Respondent.

Date of Submissions : 23 May, 2023

Date of Hearing : 25 May, 2023

Date of Judgment : 31 May, 2023

JUDGMENT

BACKGROUND INFORMATION

1. The appellant was charged for one count of disobedience of lawful order contrary to section 202 of the Crimes Act, 2009 as per amended charge dated 19th April, 2018. It was alleged that on 6th day of June, 2017 at Ba in the Western Division the appellant disobeyed the orders of the court vide Ba CF:

114/17 by releasing prisoner namely Ratu Dakuitoga Rokolisoa from her custody.

2. The appellant first appeared in the Magistrate's Court at Ba on 17th November, 2018. The orders alleged to have been disobeyed were issued by Magistrate's Court at Ba hence the substantive file was transferred to the Magistrate's Court at Lautoka to be tried in accordance with the law.
3. The appellant pleaded not guilty to the charge. After numerous adjournments on 8th April, 2022 the matter proceeded to trial. The prosecution called four witnesses and after the court ruled that the appellant had a case to answer the appellant exercised her right to remain silent.
4. On 23rd November, 2022 the learned Magistrate found the appellant guilty as charged and she was convicted accordingly. After hearing mitigation on 2nd December, 2022 the appellant was sentenced to 4 months imprisonment which was suspended for 12 months.
5. The brief summary of facts was as follows:
 - a) The appellant was employed by the Fiji Police Force and in the year 2017 she was based at the police prosecutions office, Ba. In a case before the Magistrate's Court at Ba an accused person by the name of Ratu Dakuitoga Rokolisoa was sentenced to 4 months and 10 days imprisonment in absentia. A warrant of commitment was issued by the court.
 - b) Thereafter the appellant obtained the original warrant of commitment from the court registry and took it with her to appear at the Magistrate's Court, Tavua with other custody files. The police prosecution had received information that Rokolisoa will be appearing in the

Magistrate's Court at Tavua on this day. The prisoner appeared in the Magistrate's Court and he was given a suspended sentence. The appellant in the presence of the other police officers was able to transport and get the other nine prisoners remanded at the Corrections facility at Lautoka except Rokolisoa. On the way from the Tavua Magistrate's Court to the Corrections Centre the appellant instructed PC 5368 Apisalome Ratusuka to remove the handcuffs of this prisoner.

- c) On the way to Ba from the Corrections Centre the prisoner in the presence of the appellant got off at a shop in Yalalevu, Ba. An investigation was conducted about the release of the prisoner, the appellant was arrested, caution interviewed and charged.

APPEAL TO THE HIGH COURT

6. The appellant being aggrieved by the conviction filed a timely appeal in this court. The ground of appeal is as follows:
 1. *That the learned Resident Magistrate erred in law and in fact when despite 3 elements of the offence not being satisfied as in admitted evidence namely, "any order", "warrant", "command duly made", he still found the Appellant guilty beyond reasonable doubt thereby supposedly discharging the criminal standard of proof.*
7. Both counsel filed written submissions and also made oral submissions during the hearing for which this court is grateful.

GROUND ONE

That the learned Resident Magistrate erred in law and in fact when despite 3 elements of the offence not being satisfied as in admitted evidence namely,

“any order”, “warrant”, “command duly made”, he still found the Appellant guilty beyond reasonable doubt thereby supposedly discharging the criminal standard of proof.

8. The appellant’s counsel argued that the learned Magistrate failed to consider that the warrant of commitment issued by the Magistrate’s Court seeking the arrest of the prisoner Ratu Dakuitoga Rokolisoa was not in evidence. Since the order or the command mentioned in the warrant of commitment was not tendered at trial there was nothing for the appellant to be disobedient about.
9. It was therefore erroneous of the learned Magistrate to find the appellant guilty and convict her when there was no evidence of any order or command being disobeyed by the appellant.
10. This ground of appeal is misconceived, the evidence adduced by the prosecution has to be looked at holistically. There was evidence before the court that the appellant had picked the warrant of commitment from the Magistrate’s Court registry for execution purposes. There is also undisputed evidence by Vine Bola the Assistant Court Officer, Magistrate’s Court, Ba that she had given the appellant the original warrant of commitment. In cross examination of Sgt. Ravi Narayan the counsel for the appellant had mentioned the above as follows:

It’s our instructions that she collected the warrant and brought it to you as her superior officer.

11. The above line of questioning confirms that the appellant had collected the warrant. Furthermore, there is also the undisputed evidence of PC 5368 Apisalome Ratusuka that he was instructed by the appellant to remove the handcuff of the prisoner in question when the vehicle was going to Natabua Corrections Centre.

12. It also came out in cross examination of PC Ratusuka that all the warrants of all the prisoners in the vehicle were kept by the appellant. Another important aspect of this matter is that without the warrant of commitment the prisoner Ratu Dakuitoga Rokolisoa would not have been taken into the police vehicle from Tavua to the Corrections Centre at Lautoka since in the Tavua matter the prisoner was given a suspended sentence.
13. During the cross examination of the interviewing officer WIP 2313 Ana Navunisinu the defence had read out Q. & A. 60 of the appellant's caution interview (page 32 copy record) which confirms that the appellant saw the prisoner Rokolisoa in the police vehicle when they left Tavua for the Corrections Centre in Lautoka and were returning to Ba:

Q. 60 Anything else you want to say?

A: On our way from Natabua to Ba I saw Dakuitoga sitting at the back of the truck and I was thinking when we reach Ba for him to be kept there and to be escorted to prison when the warrant is being picked from the office but along the way WSC Mere was making phone calls but I know that she was talking to Dakuitoga's wife. When the truck stopped at Yalalevu Dakuitoga got off and was talking to Eroni.

14. On the totality of evidence it is obvious that the appellant knew there was a warrant of commitment issued by the Magistrate's Court she had the possession of the warrant (although she gave a slightly different version in Q. & A. 60 above) and after the suspended sentence was pronounced by the Magistrate's Court at Tavua the prisoner was in the police vehicle. In the vehicle the appellant instructed PC Ratusuka to remove the prisoner's handcuff and on the way to Ba from the Corrections Centre the prisoner in the presence of the appellant left the police vehicle. The appellant did not do anything to stop the prisoner from leaving the police vehicle.

15. It was on the basis of the above evidence the learned Magistrate found the appellant guilty and convicted her. There was no need for the warrant of commitment to be tendered in view of the overwhelming evidence adduced by the prosecution.
16. In my considered judgment there was evidence beyond reasonable doubt for the learned Magistrate to find the appellant guilty and convict her as charged. There is no error made by the learned Magistrate.

ORDERS

1. The appeal against conviction is dismissed due to lack of merits;
2. The conviction of the appellant is affirmed;
3. 30 days to appeal to the Court of Appeal.


Sunil Sharma
Judge



At Lautoka
31 May, 2023

Solicitors
Messrs Law Naivalu for the Appellant.
Office of the Director of Public Prosecutions for the Respondent.