

IN THE SUPREME COURT OF FIJI  
Appellate Jurisdiction  
Labasa Criminal Appeal No.17 of 1978

DIRECTOR OF PUBLIC PROSECUTIONS Appellant

v

NIMILOTE BIUTOKA Respondent

Mr. I. Khan for the Appellant  
Mr. A. Katonivualiku for the Respondent

JUDGMENT

On 12th April, 1978 the respondent was acquitted in the Labasa Magistrate's Court of the following offences:

" FIRST COUNT  
Statement of Offence

PERJURY: Contrary to section 109(1) and (2) of the Penal Code Cap. 11.

Particulars of Offence

NIMILOTE BIUTOKA on the 24th day of January, 1977 at Waiyevo, Taveuni in the Northern Division having been lawfully sworn in a judicial proceeding in the Taveuni Magistrate's Court wilfully made a statement material in the said judicial proceeding that he did on the twentieth day of January, 1977 personally serve on Prakash s/o Jamna Prasad a notice to attend court in proceedings against him under regulations 54 and 125 of the Traffic Regulations 1974 knowing the same to be false.

SECOND COUNTStatement of Offence

FORGERY OF A DOCUMENT UPON WHICH A COURT MIGHT ACT:  
Contrary to section 372(3)(f) of the Penal Code.

Particulars of Offence

NIMILOTE BIUTOKA between the 10th day of January, 1977 and the 28th day of February, 1977 inclusive at Taveuni in the Northern Division with intent to deceive forged a certain document purporting to be a written plea of guilty endorsed on notice to attend court numbers 33094.

THIRD COUNTStatement of Offence

FABRICATING EVIDENCE: Contrary to section 117(a) of the Penal Code Cap. 11.

Particulars of Offence

NIMILOTE BIUTOKA on or about the twentieth day of January, 1977 with intent to mislead a judicial proceeding namely Taveuni Magistrate's Court fabricated evidence by making an entry in his investigation diary at Taveuni Police Station to the effect that one Prakash s/o Jamna Prasad had on that date signed a written plea of guilty on notice to attend court number 33094, which he knew to be false.

FOURTH COUNTStatement of Offence

FABRICATING EVIDENCE: Contrary to section 117(a) of the Penal Code Cap. 11.

Particulars of Offence

NIMILOTE BIUTOKA, on or about the 20th day of January, 1977 with intent to mislead a judicial proceeding namely Taveuni Magistrate's Court fabricated evidence by making an entry in his note-book at Taveuni Police Station to the effect that one Prakash s/o Jamna Prasad had on that date signed a written plea of guilty on notice to attend court, which he knew to be false."

The Director of Public Prosecutions appeals against the acquittal of the respondent, originally on all four counts but at the hearing of the appeal counsel for appellant stated that the acquittal of the respondent on the first count would not be pursued.

Although several grounds of appeal were formulated, these can be conveniently paraphrased under one ground, namely -

"That the learned Magistrate erred in fact and law in not correctly or properly evaluating the evidence in the case and this has resulted in a miscarriage of justice."

The prosecution case was that on 10th January, 1977 one Ram Prakash s/o Jamna Prasad (P.W.1) was riding on a motor cycle driven by one Suruj Narayan at Vatulaga, Taveuni, when the respondent stopped them. Prakash was asked by the respondent why he was not wearing a crash helmet. However, Suruj Narayan replied that he had left behind at home the second of his two helmets. Prakash never spoke to the respondent. Nor was he warned by the respondent of any possible Court proceedings that might be brought against him. Nor did he afterwards sign a plea of guilty on the reverse side of the notice to attend court No. 33094. Sometime later Prakash received a message from the Court registry to pay a fine of \$5 which was imposed on him for riding a motor cycle without wearing a safety helmet. The prosecution also rely heavily on several alterations which appeared in respondent's police notebook relating to the alleged incident and which is claimed as strongly corroborative of the prosecution version of the incident.

The respondent's evidence was to the effect that he booked Prakash at Vatulaga and warned him that he would be reported and prosecuted. He told Prakash that as he did not have an NAC notice form with him he would serve him with one later. On 20th January, 1977 at Naqara the respondent served Prakash with NAC notice No. 33094 and swore an affidavit of service to that effect a few days later.

4.

The evidence before the trial Court was in direct conflict. After carefully considering and weighing the evidence as is quite clear from his reasoned judgment the learned Magistrate pronounced himself as not being satisfied beyond reasonable doubt about the guilt of the respondent with respect to each count in the charge. The issues before the learned Magistrate were essentially one of fact and as is well established this is a matter for the trial Court rather than an appellate Court. The learned Magistrate clearly felt that on the evidence before him the standard of proof required by law had not been attained by the prosecution. No doubt in his view the evidence amounted to no more than grave suspicion. In these circumstances I can find no proper basis for interfering in a matter which is essentially for a trial Court.

The appeal is dismissed.

Sgd. T.U. Tuivaga  
JUDGE

Suva,

8th September, 1978