

AT LAUTOKA  
Appellate Jurisdiction  
Criminal Appeal No. 83 of 1978

BETWEEN:

R E G I N A Appellant

-and-

MUNI DEO s/o Raja Ram Respondent

Mr. E. Pillai, Counsel for the Respondent  
Mr. I. Jennings, Counsel for the Appellant

JUDGMENT

This is an appeal by the D.P.P. against a magistrate's acquittal of a person charged with perjury contrary to section 109(1) of the Penal Code.

The particulars of offence show that the respondent, MuniDeo, was a prosecution witness in October 1976 where S.P. Sharma, was being tried for uttering a forged document contrary to section 379 of the Penal Code. The forged document was a telegram purporting to be signed by Senator V. Sharma, purporting to contain his resignation from the Senate and was addressed to the Prime Minister. It was allegedly uttered to V.B. Singh, a Postal Clerk at Namaka Post Office and was transmitted as genuine.

Police investigations led them to the Farmer's Club at Nadi where the respondent was employed as a barman. They were accompanied by the postal clerk, V.B. Singh, who identified the respondent as the person who had handed the forged telegram to him. V.B. Singh, the postal clerk, had entertained doubts about the authenticity of the telegram when the respondent allegedly handed it to him, because it was common knowledge that Senator Sharma had gone to India several days before the telegram.

The respondent made a statement to the police under caution in which he admitted handing the telegram in at Nadi Airport post office, but alleged that he had done so at the request of one S.P. Sharma, and that he did not know the contents. He claimed that S.P. Sharma had told him to inform the post-office clerk that he (the respondent) was a nephew of Senator Sharma, and he said

that he in fact told that untruth to the post office clerk.

Relying upon the respondent as their principal witness and acting upon his alleged police statement the police charged S.P. Sharma with uttering the forged telegram.

At S.P. Sharma's trial the respondent completely denied going to the post office, handing in the telegram, denied ever seeing it, denied that he had ever been to the airport post office and denied that he had ever seen the postal clerk, V.B. Singh. S.P. Sharma was acquitted of the charge of uttering.

Subsequently the respondent was charged with the offence of perjury now under consideration. The particulars of the charge contain several assignments of perjury as indicated above namely that he had never been to the airport, had never seen the telegram, had never handed it in and had never seen the postal clerk, V.B. Singh.

For some reason a certified copy of the record of S.P. Sharma's trial for uttering was put in as Ex.1. It was not used to test the reliability or consistency of any witness's testimony and its purpose is obscure.

At his own trial for perjury the respondent gave evidence similar to what he had given in S.P. Sharma's trial. He denied all knowledge of the telegram. In evidence-in-chief the respondent said that his statement to the police, Ex.2, was untrue; that it was written out before-hand and handed to him to sign; that he refused to sign it and the police assaulted him and forced him to sign it.

In his judgment in the perjury trial the learned magistrate commented on the proceedings against S.P. Sharma for uttering the forged telegram and observed that when the respondent denied all knowledge of the telegram he should have been treated as hostile. He made what I regard, with respect, as a most erroneous statement in his judgment (p.17 lines 55-60 of the typed record.) It reads -

"Had the accused been declared hostile the admissibility in evidence of Ex.2 (the police statement of the respondent) would have been decided and the allegation of assault would have been tested. Unfortunately that was not done and it is still not resolved whether the accused was assaulted or not at the time when he is alleged to have signed Ex.2,-----"

Surely it was part of the duty of the instant magistrate to decide whether or not the respondent's statement to the police was true and the allegation of assault which would assist in determining what weight could be attached to it.

At p.18 of the record the learned magistrate said,

"In the case before me the prosecution are trying to show to the court that the accused has signed Ex.2 and has in the case told something completely different and therefore he has told lies on oath. The question now arises is the court satisfied that it was a voluntary statement and that no force or threat or assault took place in obtaining it. Having carefully examined the whole of the evidence I am not satisfied on this aspect of the matter for I feel that it is still unresolved."

The issue before the learned magistrate was whether or not the statement Ex.2 was true. If it was true then the respondent committed perjury when he stated in S.P. Sharma's trial that he knew nothing about the telegram. If the magistrate concluded that the respondent's statement to the police was untrue, or if he had any doubts about its truth then he would acquit the respondent. But the issue was one for him to resolve and when he says that it is not resolved he neglects his own obligation.

The learned magistrate also expressed doubts about the identification of the respondent by the postal clerk V.B. Singh. The reasons he gave for these doubts are not explicit. He said that, V.B. Singh stated that Inspector Yakub called the respondent from the bar at the Farmer's Club and then V.B. Singh recognised him. V.B. Singh did not say that in examination-in-chief; what he did say was,

" Remember 22. 9.75. I was brought to Farmer's Club, Nadi - came with Inspector Yakub - people were in the club - five or six people. I saw the accused there and I recognised that he was the one who brought the telegram."

In cross-examination V.B. Singh denied that Inspector Yakub pointed out the respondent and he also stated that after he had identified the respondent Inspector Yakub then called the respondent from the bar.

There were logical and cogent reasons as to why V.B. Singh might recollect the man who handed him the telegram. Thus its contents containing the resignation of a senator were startling; the senator in question had left the country several days before the telegram was presented; the senator himself did not present it. These

factors were sufficient to put an intelligent clerk upon inquiry and V.B. Singh said in evidence that he asked the respondent why it was being presented after the senator had departed and the respondent replied that he had forgotten about it. He says he asked the respondent if he were related to the senator and the respondent replied that he was the senator's nephew and the respondent gave his father's name as Dayanand Sharma brother of the senator.

If such a conversation took place under such startling circumstances one may well expect the postal clerk, V.B. Singh, to take notice of the respondent in that period. This was not a fleeting glance in poor light, but close contact across a counter, face to face during the late morning; it was an encounter involving some interrogation which was then followed by an acceptance of and payment for the telegram. If V.B. Singh is truthful there is good reason why he should recollect the respondent.

I would have thought that the foregoing presented very good reasons why V.B. Singh was able to identify the respondent. But the learned magistrate said in his judgment, line 55, p.18,

" The P.W.3 has not given any reason as to how he has been able to recognise the accused as the person who brought the telegram."

The respondent's own statement to the police, Ex.2, gives a similar account of the conversation between the postal clerk, V.B. Singh and the respondent.

The learned magistrate acquitted the respondent on the perjury charge and it is not at all surprising that the D.F.D. has appealed.

Grounds (b) to (g) amount to a complaint that the learned magistrate failed to make any determination on the issue whether the respondent's statement to the police was true. I find that those grounds are well made out in that the respondent's evidence in court had amounted to a declaration that the police statement was untrue.

Grounds (i) and (j) complain about the magistrate's approach to the question of the postal clerk's, (V.B. Singh's) identification of the respondent and his rejection of that identification. Again I find that these grounds of appeal are well laid for the reasons I have given in my judgment.

The appeal is allowed and in the circumstances, there will be a re-trial before another magistrate. The fresh trial cannot of course be heard by the magistrate who conducted the trial against S.P. Sharma for uttering.

LAUTOKA,  
6th October, 1978.

(sgd.) J.T. Williams  
JUDGE

Director of Public Prosecutions for the Appellant  
Messrs. Pillai & Co., for the Respondent

Date of Hearing: 22nd September, 1978.