

S. Sisifa
31/10/14

IN THE COURT OF APPEAL OF TONGA

CRIMINAL JURISDICTION

AC 13 of 2012

NUKU'ALOFA REGISTRY

[CR 207 of 2010]

BETWEEN : 'ANAMALIA TU'AKALAU - Appellant

AND : REX - Respondent

**Coram : Salmon J
Handley J
Hansen J
Tupou J**

**Counsel : Mr 'O. Pouono for the Appellant
Mr S. Sisifa for the Respondent**

Date of Hearing : 20 October, 2014

Date of Judgment: 31 October, 2014

JUDGMENT OF THE COURT

- [1] This is an application by a former police officer, for leave to appeal from the decision of the Lord Chief Justice refusing leave to appeal from her conviction on counts of forgery, using a forged document knowing it to be forged, and of attempting to interfere with the course of justice. She had elected trial by Jury, and the Jury returned verdicts of guilty on all three counts.
- [2] On 14th September, 2012 Cato J, the trial Judge, sentenced the applicant to 18 months imprisonment on the first two counts, fully suspended, and on the third count she was ordered to perform 60 hours of community work.
- [3] On 18th September, 2012 the applicant appealed against her conviction, alleging that the verdicts of guilty were against the weight of the evidence, and that the sentence was excessive. She needed leave to appeal against her convictions under s.16 (b) of the Court of Appeal Act because her grounds of appeal raised questions of fact alone. She also needed leave to appeal against her sentence under s.16(c).

- [4] The trial Judge refused a certificate that it was a fit case for appeal against her conviction, and on 24th May, 2013 the Lord Chief Justice, sitting as a single Judge of the Court under s.28, refused leave to appeal against conviction and sentence. The applicant, as was her right under s.28, now seeks leave to appeal from her conviction from the Full Court.
- [5] The grounds of appeal against conviction acknowledge that there was evidence before the Jury which entitled them to convict, but assert that, given the weight of the evidence, the verdicts were unreasonable.
- [6] There was no challenge to the summing up, and there was no request from Counsel who appeared for the applicant at the trial for any redirection or further direction.
- [7] The trial Judge directed the Jury that the defence had not really challenged the objective elements of the forgery, and using a forged document counts, and that the real question for them was whether the accused did those acts with the intention of deceiving Deputy Commissioner Taniela Faletau.

[8] The applicant gave evidence at the trial, and denied having any intention to deceive. The trial Judge directed the Jury that the Crown had to prove beyond all reasonable doubt that she had that intention. The Jury were directed that if they had any doubt about that they would acquit, a direction that was favourable to the applicant.

[9] If the Jury did not accept the applicant's denials, and they were not bound to do so, they were fully entitled to convict because there was a powerful circumstantial case against her. This was essentially a question of fact for the Jury which heard and saw the applicant give her evidence.

[10] The complainant went to Mu'a Police Station on 17th August, 2009 and spoke to the appellant, a policewoman on duty, who recorded the complainant's statement that her father's parked car had been damaged when Latu Tonga backed his car into it, and then drove off.

[11] The appellant told the complainant her complaint could not be registered until the police received a written estimate of the cost of repair.

[12] The appellant said this was the practice at that station, and she was supported in this by Inspector Kaufusi. Deputy Commissioner Faletau's evidence was to the contrary. However in January 2010 the appellant opened a file which she handed to Deputy Commissioner Faletau although it did not contain an estimate of the damage.

[13] Just before the appellant went off duty on 17th August, 2009, according to her evidence, she gave the file with the complainant's statement to Inspector Kaufusi, but the latter denied this. The complainant gave hearsay evidence, without objection, that her father, since deceased, obtained a written estimate of the cost of repair and took it to the Police Station on 18th August, the following day. The file, the original statement, and the estimate were never found.

[14] In January 2010 the father complained to Deputy Commissioner Faletau about the delay in investigating and following up his daughter's complaint. Deputy Commissioner Faletau then asked the appellant to produce the file.

[15] The appellant prepared a file, backdated it to make it appear that it had been created in August 2009, and obtained a second statement from the complainant which she also backdated to 17th August, 2009. She placed this in the file and gave it to the Deputy Commissioner without a word of explanation. The back dated statement was the document relied upon as a forgery because it told a lie about itself, and it's delivery to the Deputy Commissioner was the use relied upon to support the second count.

[16] When the Deputy Commissioner examined the file he noted a number of significant discrepancies, and on examining the station diary for the 17th August 2009 he found that the complaint had not been recorded there as it should have been.

[17] The complainant said, but the appellant denied, that when her original statement was being taken the appellant said she knew Latu Tonga, and that he did not have a driver's license. The appellant said that in the complainant's first statement the latter said that she would drop the complaint if compensation was received. The complainant denied this.

[18] In January 2010, after the appellant had been asked by the Deputy Commissioner to produce the file, she called on the complainant with Latu Tonga and his mother who handed over a sum of money to the complainant in an attempt to settle the complaint.

[19] The Jury were entitled to find that the appellant's knowledge of the other driver and his family, and her attempt to settle the complaint in January 2010 not only supported the third charge of attempting to interfere with the course of justice, but also threw light on the reasons for the absence of the first statement and the first file. They provided a motive for the appellant's actions in failing to record the complaint, and attempting to deceive the Deputy Commissioner.

[20] The Jury were also entitled to reject the appellant's evidence that she gave the file to Inspector Kaufusi and to infer that this evidence was concocted in an attempt to explain the disappearance of the file and the first statement. Inspector Kaufusi's denial provided powerful support for the circumstantial case against the appellant.

[21] This Court cannot possibly find that the Jury's verdicts were against the weight of the evidence, or more accurately that they were unreasonable, or unsafe and unsatisfactory.

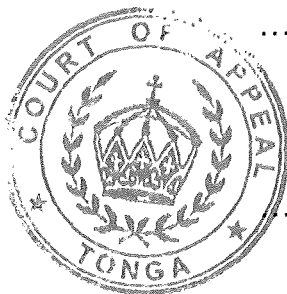
[22] In our judgment the verdicts cannot be disturbed, and the application for leave to appeal against conviction must be dismissed.



Salmon J



Handley J



Hansen J



Tupou J