

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 084 of 2009

Between

STATE

And

JOJI ROKETE (1st Acc)
JOSUA WAKA (2nd Acc)
SANJEEV MOHAN (3rd Acc)
JONETANI ROKOUA (4th Acc)

Counsel: Ms S. Puamau for the State
Mr. J. Savou (L.A.C.) for the First accused
Mr A.J. Singh (instructed by L.A.C.) for the Second Accused
Third accused in person.

Dates of hearing: 21 to 25 October, 2013.

Date of Ruling: 24 January, 2014

RULING

- [1] The State seeks to adduce into evidence the cautioned interviews of each of the first three accused along with the answers to charge provided by each. In addition the first accused made a verbal admission after he was recaptured, he having escaped from custody. They wish to have a ruling on the admissibility of that inculpatory statement also.

The fourth accused made no admissions, neither orally nor written.

First Accused

- [2] The first accused was interviewed under caution in the Ba Police Station from 1310h on the 10th September 2009 until 1438h on the 13th September 2009. In that interview he made admissions to the crimes being investigated. The questions and answers in the interview were recorded.
- [3] On the second day of questioning, the first accused escaped from the Ba Police Station during a lunch break, and he was recaptured about 25 to 30 minutes later in a nearby cane field. In a Police vehicle returning to the Station, the first accused made spontaneous verbal admissions relating to the investigation.
- [5] On the 14th September 2009, the first accused was formally charged with murder, robbery with violence and unlawful use of a motor vehicle. In response to the charges he made a detailed inculpatory statement.
- [6] The State wishes to use all of this evidence at trial on the general issue.

Second Accused

- [7] The second accused was interviewed under caution from 1000h on the 12th September 2009 until 1530h on the 14th September 2009. He made admissions to the crimes being investigated and those admissions were recorded along with all the questions and answers of the interview.
- [8] He was formally charged at 1400h on the 14th September 2009. In response to the charges he made an inculpatory statement.
- [9] The State seeks to have both the interview and the Charge Statement admitted into evidence in the trial.

Third Accused

- [10] The third accused was interviewed under caution in the Ba Police Station between 1738h on the 12th September 2009 until 1135h on the 14th September 2009. In that interview he made admissions in connection with the investigation.
- [11] He was formally charged with three offences at 1146h on the 15th September 2009. In answer to that charge he made an inculpatory Statement.
- [12] The State seeks to have the record of interview and the Record of Charge admitted into evidence at the trial on the general issue.

Grounds of Objection

- [13] In February 2012 all three accused filed written grounds of objection to the admissibility of any admissions made by them.
- [14] The first accused submits through his then Counsel that: (and I quote exactly as written)
- he was assaulted by about 10 Police Officers after his arrest at the Ba Police Station
 - his confessions were obtained under force, duress and pressure
 - he was smacked, slapped and pushed and assaulted on his head, chest and mouth. He kept denying the allegations and was told that he would be assaulted until he admit or confess
 - through pressure and threat from the Police he was also told by the Police that his fingerprints were uplifted from the Crime Scene
 - he was interrogated for three days at Ba and he kept on denying. On the third day he attempted to escape as they refused him a visit by or to his relatives. He was rearrested and assaulted again.
 - He was taken for a medical examination but the Doctor did not do a thorough medical examination on him.

- He made a false confession and incriminated his co-accused through pressure because he could not stand the pain anymore. The statements were not read back to him and he was forced to sign.

The second accused by his counsel submitted:

- when being taken to the Police Station he was falsely informed that the 1st accused had implicated him.
- the confessions were involuntary since they had been obtained by brutality. He was punched on the face and kicked in the ribs. His hands were handcuffed behind his back and he was hanged by the wrists from the netting above the door while the assaults continued. He was hit repeatedly with Police batons and crushed chillies were applied to his eyes and anus.
- the answers to the questions were fabricated and he was in so much pain he had no choice but to sign where directed. He was never given an opportunity to read the document.

The third accused, once represented, submitted by that Counsel:

- he was forced to admit allegations made against him and though he was and still is an asthmatic person, the Police threatened to take away his inhaler pump.
- he was slapped on the head about 8 times
- he was assaulted on the stomach or punched by about 7 unidentified Police Officers at Ba Police Station during the night before he was interviewed. Two of his co-accused witnessed the whole incident.
- he confessed involuntarily as he could not stand the pain anymore. He was forced to sign a document without reading it and he didn't realise that it was a record of his interview.

The Law

[15] The Fiji Court of Appeal in **Ganga Ram and Shiu Charan v R** 1983 (unreported) outlined the two-part test for the exclusion of confessions at p.8:

*"it will be remembered that there are two matters each of which requires consideration in this area. First, it must be established affirmatively by the Crown (sic) beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – which has been picturesquely described as "the flattery of hope or the tyranny of fear" **Ibrahim v R** (1914) A.C. 599; **DPP v Ping Lin** (1976) A.C. 574.*

*Secondly, even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. **R v Sanag** (1980) A.C. 402, 436CE). This is a matter of overriding discretion and one cannot specifically categorise the matters which might be taken into account."*

- [16] It is for me to decide therefore whether these interviews and charges were conducted freely and not as a result of threats, assaults or inducements made to the accused by a person or persons in authority [in this case obviously the Police]. Secondly, if I find that there has been oppression or unfairness, then I can in my discretion exclude the interview. Finally, if any accused's common law rights have been breached, then that will lead to exclusion of the confessions obtained thereby, unless the Prosecution can show that the suspect was not thereby prejudiced. These rights include the right (i) to have a legal representative of his choice and (ii) have access to family or next of kin present.
- [17] I am conscious of the fact that these proceedings are in respect of three accused and therefore the case against each must be looked at separately. The evidence for or against one is not necessarily applicable to the other.
- [18] The burden of proving voluntariness, fairness, lack of oppression and common law rights (there being no Constitution in effect at the relevant times) where applicable, and (if there is non-compliance) lack of prejudice to the suspect, rests at all times with the prosecution. They must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.

The Prosecution Case

[19] In the quest to have all of this material ruled voluntary and therefore admissible the State called 13 Police witnesses and two medical officers. One Police witness and one medical officer gave evidence from a distance by "Skype". Despite those two witnesses not being present in Court, they both swore an oath and I was satisfied that they were aware of the nature of the proceedings and I was satisfied that their evidence was appropriate and could not have been received any other way within the time constraints. There was no objection from any defence party to this mode of evidence.

The case relating to the first accused.

[20] Police witnesses told of the arrest of the first accused at his home in Nailaga Village on the 10th September 2009. At that time, the Investigating Officer Iakobo ("IO") attended with three or four other officers and a driver. Just before the arrest IO had received information from Forensics that fingerprints found at the scene of the crime matched those held on record of the first accused . IO formally arrested and cautioned the 1st acc at his home. There were no assaults nor any other improprieties and the 1st acc's request that he be allowed to change his clothes was acceded to. He was taken by Police vehicle back to the Ba Police Station for further enquiry. In the vehicle the accused was told of the forensic evidence and was further cautioned. There were no assaults in the Police vehicle. Within minutes of arriving at the Station, PC Belo (who is currently serving on a Peace Mission abroad) commenced interviewing the 1st acc with IO as his witness. P.C. Delai was also present as the prisoner's escorting officer. Neither IO nor Delai saw any assaults, nor heard any neither threats promises nor inducements. Nobody saw any injuries on the suspect nor saw anything done that might cause injury. During questioning that day (10th Sep) the suspect made no admissions to the allegation. He was kept overnight in the Police Cells.

[21] The next day (11th Sep) the interview resumed with the suspect still denying the allegations. Questions were put to him about stolen property found during a Police search at his home. Shortly after that, during a break for lunch, the suspect escaped from the Station and ran out into a nearby cane field. He was chased by a party of Police Officers and was apprehended in the cane field. He was appropriately

subdued and placed in a vehicle to return to the Ba Police Station. The whole process from escape to return took about 25 to 30 minutes. In the vehicle returning him to the station, the suspect broke down and was crying. He told the officers with him that he had committed a crime and started making admissions. At the Station PC Belo was instructed to continue with the interview. From that point on the 1st accused became far more co-operative and gave detailed inculpatory answers to the questions asked.

[22] D/Sgt Sivo was at the station at the time. He is the maternal Uncle of the 1st accused as well as being a community leader and a Methodist Deacon. He spoke to the accused before he resumed his interview.

[23] The interview continued into 13th September with a reconstruction led by the first accused. At the end of the interview he chose to read the record of interview and he took 41 minutes in doing so. He did not wish to amend or add anything to the record.

[24] On the 14th September he was formally charged, the process being recorded by the charging officer PW5 Nale. The officer said that there were no assaults, no improprieties and the suspect appeared to understand and co-operated with the process.

[25] A medical officer, Dr Dragon medically examined all three accused after they had finished their interviews and charge statements. Having examined the first accused both visually and with a stethoscope, he opined that there were no visible injuries on the person of the first accused. He did find that there was a periodontal problem around one of his teeth and referred him to a dentist.

The first accused in Defence.

[26] The first accused after being advised by his Counsel elected to give sworn evidence from the witness box.

[27] The first accused was at home on the 10th September in Nailaga village . He heard PCV Nakeke calling him from outside. He was on friendly terms with Nakeke and the PC was using a familiar nickname to call him. He went outside - saw other

officers and he was asked to go to the Police Station with them. He wasn't told why. In the vehicle the I.O. said that they wanted to talk to him about the crime in Yalalevu, they had evidence against him and he should make it easy for everyone by not lying. If he did not co-operate he would be "taken up to the Military Camp and dealt with". An officer seated next to him was nudging him in the ribs forcing him to admit the crime. At the station, formalities were completed and he was taken to the Crime Office. In that office there were more than 10 officers present from Ba, Tavua and even Lautoka. There were men from the Strike Back team. He was frightened of them. They swore at him, slapped him on the back of the head and threatened to beat him up if he did not admit. He was there more than an hour. He repeatedly said that he knew nothing but they continued to swear and slap. It was only Indo-Fijian Officers and Strike Back Officers - not hit by iTaukei officers. He was slapped many times on the right cheek. He was taken to the charge room to see other suspects. He knew one of them, one Seruvi. He was telling Seruvi about the pain on his ribs and on the back of his head. He was never confronted with the 2nd accused He was taken back to the interview room for the interview. He told the officers present that he was at home on that night with his brothers and sisters but they never checked his alibi. The interview didn't start until the evening of the 10th September. but in any event it finished at about 8pm when he was locked up in a cell at Ba. There was no mattress pillow or blanket; just a cement shelf to sleep on. He asked an officer who was a relative to bring him a mosquito coil but he didn't.

- [28] He continued the interview on the 11th September. During the lunch break that day, he ran away. He ran away because he couldn't bear the things that were being done to him . He ran towards the creek and the cane field. Police chased him on foot and in a vehicle. Some civilians helped to locate him and he was caught. When he was caught there were more assaults by an "Indian officer" from Ba. He was punched many times and handcuffed behind his back. He was thrown inside a vehicle and taken back to the Ba Station. On the way back they swore at him but he said nothing because he was in too much pain. When he got back a big party of officers was waiting for him. They started assaulting him and threatening him again.
- [29] PC Sivo, his Uncle came to talk to him. He told him that after the escape he should make everything "clear" - if it is not clear on earth it will not be clear in heaven. Sivo told the 1st acc that he was praying for him and not to worry about the family.

- [30] It was then that he decided he had had enough. He admitted it all according to their theory based on the information they had gathered. The information was on the white board and he just followed that. The sketch that he drew was also on the white board and he copied that into his cautioned interview. On the second day the 2nd accused was brought into the Crime Room and then taken to a small room . The PCs were shouting at him. He was taken to confront him and say that he (2nd acc) was involved. He refused to say so but they forced him by punching his stomach and shouting into his ear. When the 2nd acc was taken away he could hear him being punched and assaulted. The 2nd acc was crying and shouting for them to stop.
- [31] On the 3rd day they brought in an "Indian guy" (3rd acc). They said that this guy was with you but I didn't know him. They threatened him to implicate the 3rd accused. They swore at him again and punched him again in the stomach.
- [32] In cross-examination he said that parts of the record of interview were false; they were the parts after the escape. All the answers given were given according to their information.
- [33] The first accused called one witness - it was the suspect Seruvi whom he had been with in Ba Police Station. The witness told of being at Ba Police Station in the late afternoon of 10 September 2009. He was told to sit in the charging room and after waiting there the 1st acc was brought in. Then IO and other Police Officers came in. The 1st acc was told to confess everything and to say ALL. The 1st acc was frightened and worried. He said he didn't know anything. One of the officers slapped the back of his head and told him that if he didn't confess he would be taken to the Military Camp.

The Prosecution Case relating to the 2nd acc ("2acc")

- [34] PW7 P/Cpl Tamani, told the Court that he went to Nailaga Village on 11 September to arrest 2acc. There were about 5 officers (he can't remember their names). The 2acc was located. He was approached and told why the officers were there and he was cautioned. He was then taken back to Ba Police Station where he is recorded to have arrived at 1845h and where enquiries were made of him by way of a cautioned interview. He was interviewed over three days; the 12th, 13th and 14th

September 2009. On the second day, 2cc made an unspecific complaint of not feeling well and a Medical Officer was called in to see him. A Dr. Joyce came to the station and examined the 2acc. After examination the doctor opined that the 2acc was well enough to continue the interview. He heard no mention of an X-ray needed. During the course of the interview the witness Tamani afforded the suspect all his rights in law, and he was given adequate rest and refreshment. In the intervening nights he was kept in custody at the Lautoka Police Station.

[35] PW8 and PW2 were the witness and the escorting officer for 2acc respectively. Neither saw any assaults on the 2acc, nor did they see any improprieties in the way he was treated. PW6, the IO, saw him and did not note any injuries on the suspect. The IO ordered that he be medically examined after the formalities were completed. In the afternoon of the second day of interview (13th) he led a Police party in reconstruction of the alleged crimes. 2acc was formally charged in the late afternoon of the 14th September. He was at the time afforded all his rights as a suspect.

[36] PW12 D.Sgt Sivo also spoke to the 2acc on the day he was charged (14th) and saw no physical injury on him. Apart from being related to 1st acc he is also related to 2nd acc. The 2acc made no complaint to him at that time. Sivo merely escorted him to the Charge room. He denies that he was a person of high status and had undue influence over 2acc.

The second accused in defence:

[37] 2 acc gave sworn evidence. He was at home at about 5.30pm on the 11th September 2009 when "many" Police Officers came to his house. He was told that his name had been mentioned in connection with the case in Yalalevu and they wanted to take him away for enquiries. He agreed and they got into the Police vehicle. On the journey he was threatened. He was told that he couldn't deny the allegations because the first accused had already mentioned his name. Iakobo, the I.O. slapped him from the front seat, saying "at the station we will see how strong you are". On arriving at Ba Police Station he was taken straight to a small room in the Crimes Office. There were several officers there who started threatening him again. He was punched hard on the back. He was handcuffed behind his back - the 1st accused was brought to confront him ; the 1st accused implicated him and then

they hit the 1st accused and took him away. the officers hit 2acc on the back of the head and punched him with fists and batons. 2acc was made to stand on a stool, still with his hands cuffed behind. He was taken to near the door and he was hung from the wire mesh above the door by his handcuffed wrists. The stool was removed. He was frightened and they started punching him in the stomach. This continued for about 2 - 3 minutes until he passed out. When he came to he was lying on the floor alone in a locked room. The assaults then stopped and he was taken to Lautoka Police Station to overnight.

[38] The next morning (12th) some officers came to collect him and take him back to Ba - to the same room. The threats started again, including a threat to take him to the Military Camp. He kept denying the allegations but was then punched hard on the back, many times with fists . He was punched also on the back of the head. The 1st acc was brought back and told to implicate 2acc again. There were more punches and once again he was hung up by his handcuffed wrists to the netting above the door. His wrists were bleeding and he showed what he claimed to be injuries to the Court. The Court saw what looked like a protrusion or cyst on his ribs and very faint marks on the inside of his wrists. They took him down from the door and placed him in a room. The I.O. said he would call a Doctor. The lady Doctor came examined him and told him he needed an X-ray. She left very soon after that. He was taken back to a room and "after one minute" he was assaulted again by I.O. and the Strike Back team from Lautoka. Again he was handcuffed, his trousers removed and chillies were put on his anus. He felt frightened and feeling hot; but he was still denying the allegations. He was then assaulted so much he finally told them that yes, he did go with the 1st acc. The assaults stopped and and his interview was recorded.

[39] His relative (D.Sgt Sivo) approached him with a Bible and told him that if he tells the truth on earth, he will be set free in Heaven. In the interview he was forced and threatened to give the answers that he did. There were more than 7 - 8 people in the room at the time. He was given a pen and forced to sign. In the Charge Statement taken after the Interview he was again threatened to give the answers and given a pen, he was forced to sign.

[40] 2acc was then taken to the Hospital for a medical examination, but before going the Police made some promises that they would withdraw the case against him but if he

complained to the doctor they would not be able to help him. At the Ba Health Centre, he met his wife. He told her that the Police were going to help him. He told her about the injuries and he showed her. During the examination the Doctor didn't look at his body and he didn't tell the Doctor about his injuries because of the "promise". Nor did he tell the Magistrate nor the High Court Judge about his injuries.

[41] In October 2009 he was visited by an officer from the D.P.P. and one Policeman at Natabua Prison. He was offered immunity in return for giving evidence against his co-accused. He refused because he said he knew nothing about the case.

[42] The second accused called one witness, his wife. Loraini Turaganikeli. She said on oath that her husband (2acc) was taken away from their home at about 5pm on the 11th September 2009 and she then didn't see him until the 15th September when she went to visit him at Ba Police Station. He signalled to her that he was being taken to the Hospital. She then went to the Ba Medical Centre where she met him and was able to talk to him. She "observed" him and was able to see bruises on his wrists. There were bruises and blisters and he then showed her his ribs. There were injuries there and a blister with black spots. 2acc told her that he had been assaulted by the Police between the 11th and 15th September and on the 11th September, he did not have those injuries. She could also see that he was frightened but he told her not to worry because the Police were going to "sort it all out".

The Prosecution case against the third accused ("3acc").

[43] This accused was arrested on the 12th September 2009 by the Nadi Police and was then taken to Ba Police Station in the early evening. On that day at 1738h in the Crimes Office he was cautioned and interviewed by DC 3016 Goundar who at the time of hearing of these proceedings was in the Sudan on peace-keeping duties. The witnessing officer to the interview was Sgt 735 Surendra Prasad . Prasad was present throughout the interview and says that when 3acc was first brought in, he had no visible injuries nor did he make any complaints. 3acc was afforded all of his rights during the interview. The interview took three days to complete and the suspect was given adequate rest and was kept in Tavua Police Station for the nights of the interview. At no time did he see any injury on the suspect and at no time did he ever complain. During the interview (the 13th) the

suspect led a Police party for reconstruction of the crimes. He provided a sketch of the scene: 3acc made no complaints. He never appeared to be in medical difficulty.

- [44] The 3acc was formally charged at Ba on the 15th September 2009 by DC 2944 Ashwin. The witness to the charge was Inspector Prasad. . Inspector Prasad told the Court that in the course of the Charge the accused was afforded all of his rights; there were no improprieties and the suspect made no complaints. He had no injuries on him, nor did he appear to be in pain. He did not indicate any medical condition, nor was the witness aware of any. The witness identified the record of the charge as being a true and proper record of the Charge proceedings.

The Third Accused in Defence

- [45] The third accused gave sworn evidence. He told of being arrested by the Nadi Police on the 12th September and taken to Ba. On the way he was told that he had committed a murder and they threatened him. They said "today is your day. You will be beaten if you don't admit". At the station he was taken to the Crime Room and the first accused was brought in to confront him. When asked if this was the Indian boy, the first accused said "not him". The first acc was punched in the stomach and he was then on his knees moaning, in pain. Having seen that the 3acc was frightened. He was then taken to a small room where the interviewing officer (Kamal Goundar) and the witnessing officer were present. They told him he was involved and then they started yelling at him aggressively, saying "today you will see..". They also used abusive words to him in Hindi. He was so frightened he had a mild asthma attack. He had his relieving ventolin pump with him and when he took it out to use one of the officers came and grabbed the pump. He told them he was an asthma patient and he was having an attack. They said - confess and do what we want if you want to leave. They added that if he did not confess he would die like the deceased. The 3acc said he was crying and begging for his pump; he was short of breath. Both officers started slapping him and assaulting him on the face and head and told him; "you will never escape this. We will not leave you until you tell us that you are involved..". He was in so much pain and so frightened, he had no way out except to start confessing. It was then that they gave him his inhaler back. After the interview he was taken back to Tavua Police Station where he was not provided with any mattress, blanket or pillow and it was a cold night. He was kept in the cell for 4 nights and he did not have the basic necessities and never given a chance to

shower or use a tooth-brush. He had to wear the same clothes for four days. Once when they slapped him, they forced his head against a wall.

- [46] When he was taken to be charged he was still frightened and the only escape was to make it easy for them and then walk away from the ill-treatment. His statement in the charge record was involuntary - he did not want to say what is said there. He was threatened by the charging officer that if he did not cooperate, he would "go through wars". He had no other way but to "go with the flow". After he was charged he was taken to be examined by Dr. Dragon. He told the Doctor that he had been assaulted by Police . After examination he was taken back to the Station. When he was taken to Ba Magistrates Court he told the Magistrate of the assaults. He concluded his evidence by saying that both the interview and the charge statement were taken against his will and they were both made in inhumane circumstances.
- [47] The 3acc called one witness. He was Emosi, a prisoner serving 8 years for robbery. He told of being at Tavua Police Station during the night of 14 September 2009. He was in one of the cells with about 4 others. There was no mattress, no pillow and no blanket. There were no proper toilet facilities and no running water. The 3acc was one of those present. They didn't talk but he had a ooh look at 3acc when he was brought in. He was crying and "not in a well condition". It was a cold night and they both had to sleep on the cement.
- [48] The State called two medical witnesses in the Prosecution case.
- [49] Dr Joyce Joselyn Balbuena (PW13) , gave sworn evidence that she is a medical officer , presently attached to Nadi Hospital. In 2009 she was attached to the Ba Medical Centre.
- [50] On the 12th September she was asked to go to Ba Police Station to examine a patient. It was during her normal lunch break so you think it was probably a little after 12 noon. The Police picked her up and took her to examine a prison in custody. She examined the male patient for about 15 minutes and wrote a report which she produced and spoke to the patient (it was 2acc) had normal respiration clear breath, sat normally and had no visible signs of injury. She examined him by sight and with a stethoscope. He told her he had a pain on his chest but there was

no tenderness on the chest wall. She certified that the patient was fit to continue to be examined.

- [51] Dr. Bayani Dragon (PW15) gave sworn evidence by "Skype". He was unable to come to Court to give "viva voce" evidence because he was ill. He qualified in medicine from the University of Manila in the Philippines and has practised for 17 years since. On the 17th September 2009 he was based in the Ba Medical Centre and was asked by the Police to examine some patients on that day; he was told that they were suspects in a murder case.
- [52] S to the 1st acc, he examined him and found no physical injuries but hearing his complaint of toothache, he found that he had periodontal problem causing him to have a mobile tooth and pain. He referred him to a dentist. The Dr. explained that this was most likely caused by infection of the mouth and could not have been caused in the recent past by any applied force.
- [53] As to the 2nd acc he said that there were no visible injuries and other tests proved normal.
- [54] As to the 3rd accused, Dr Dragon found that he had a small abrasion wound at the posterior part of the ear. He also made an incidental finding of asthma. In explaining these findings in cross examination, Dr. Dragon said that the abrasion would not have been from having one's face forced against a wall because in that case the outer part of the ear would have been injured. As for the asthma, he said that the patient (3acc) had not complained of asthma; in fact he had found it "in passing" and the patient didn't even know of it. Dr. said that the 3acc was rather surprised to hear it. The asthma condition was not serious and the Dr. Gave had given him an inhaler to use...

Analysis

- [55] I have set out the evidence as completely as possible in this ruling. The parties can be assured that I have considered the evidence in its entirety, along with their submissions on the evidence. When considering that material I am of course mindful of the need of the Prosecution to prove to me beyond reasonable doubt that

all of the material that they seek to be made admissible for use at trial on the general issue has been generated voluntarily and without oppression.

- [56] There being three accused in these proceedings on admissibility, I look at each of three separately and assess the evidence relating to each entirely as it is relevant to him alone.
- [57] The evidence of the Police witnesses, as supported by the medical evidence was consistent, reliable and believable. Each Police witness gave evidence of proper procedures being followed, of caution when appropriate, of the affording of constitutional rights to the suspects. Each was told of the reason for his arrest, his right to remain silent and the consequences of not remaining silent. Each was given the right to contact a legal representative and each was held in custody separately from his co-accused. Each was taken to Court as soon as reasonably possible. The only inconsistency in the Police evidence concerned the comfort of the cells at each of the three Police Stations and where each accused spent nights during the making of their caution interviews and charge statements. The prisoners all said that they had no blanket or pillow and one or two said that they had no mattress. The Police witnesses were not in agreement on this, but I was not too concerned about this discrepancy for the reason that not one of the accused cited this "inconvenience" as a ground of his objection to the admissibility of his interview . In addition to that I find that the "uncomfortable night cell" question took on a life of its own and once raised by Counsel for the first accused it was quickly seized on by all accused and it was even a matter that was gratuitously mentioned by the witness for the third accused, Mr. Emosi when describing his custody at Tavua Police Station on the night of 14th September 2009 immediately said "no pillow, no mattress no blanket". There was no reason in the continuity of his evidence to have said that and I find that the evidence was not independent and was more than likely "coached".
- [58] With that exception, I find that the Police evidence was truthful and capable of being relied on by the Court.
- [59] While it is unfortunate in pre- trial proceedings to have to make findings on the credibility of accused persons, it is inevitable in a voir dire and anyway it is a very

restricted finding on a limited issue. I look at the evidence of each accused separately.

First Accused

[60] The evidence of the first accused that he was continuously assaulted on the back of the head and on the stomach is certainly not borne out by the medical evidence. Had he been beaten as much as he claimed there would surely have been marks of violence on his body but there were none. I do not believe this evidence of assault and I don't believe that he was forced to sign the interview.

[61] The reasons for the first accused's escape from custody on the second day that he was being interviewed still remain unclear, even after hearing the evidence. It is worthy of note that the reason given in his original grounds of objection [that he was refused a visit by his relatives] was never raised in his evidence before me ; he claiming instead that he fled because he couldn't stand the pain of the beatings. Such a departure from his original claim certainly did nothing for his credibility.

[62] While the first accused's witness Seruvi, may have well been in the Ba Police station at the same time as the first accused, I do not accept that he saw 1st accused being slapped on the back of the head or that he heard it said that they would take first accused up to camp. The witness appeared very uncomfortable and reluctant to give evidence and I have serious misgivings about his independence.

Second Accused

[63] The evidence of the second accused regarding the assaults and physical abuse occasioned to him is so exaggerated that it is not possible to believe it. The Doctor examining him after the interview found no visible bodily injuries, but had he been assaulted as claimed he would have multiple injuries if not hospitalised. To be hung up by metal handcuffs on his wrists not only once, but twice would have left annular injuries if not severe bleeding rather than the feint vertical "injury" that the 2acc showed me.

- [64] Unfortunately for the 2acc, his grossly exaggerated evidence as to the assaults perpetrated on him means that I cannot accept anything he tells me.
- [65] The second accused's witness, being his wife, gave evidence that was totally lacking in independence and not at all credible given that she "saw bruises" on his wrists when on the accused's account there should have been serious wounds or lacerations. There is every reason to believe that her evidence had been "coached".

Third accused

- [66] The 3acc who was unrepresented gave rather astonishing evidence in his defence to the application. His unprompted disquisition was polished, articulate, lucid and entirely apposite to the issues of inquiry. Despite that fluency, I did however have serious misgivings about his evidence. It was rather far too well prepared and rehearsed and it did not have the "ring of truth" about it. The 3acc evidence about the torture of being deprived of his asthma device was completely at odds with the Police evidence and also with the evidence of Dr. Dragon. Dr. Dragon said that he found incidentally that the 3acc had asthma and that when told about it the 3acc seemed to be rather surprised. Up until then he had no medication with him.
- [67] I prefer the evidence of Dr. Dragon and I find that this obviously wily accused seized upon this piece of medical evidence to try and bolster his defence of medical abuse. As a result I don't believe that he was forced into confession by being deprived of his medication. In addition to that I find that the 3acc's attempt to use a finding of a small abrasion **behind** his ear to be evidence of having his head pushed against a wall, opportunistic and deceitful.
- [68] I do not accept the evidence of the 3acc.
- [69] The third accused's witness was a fellow serving prisoner. I had gave doubts about his evidence when he immediately told me, unprompted, that the Tavua police cell had no mattress, no pillow and no blanket. I am of the view that he lacked independence and that his evidence had been "coached".

Conclusion

- [70] I find that the caution interview and the charge statement of the first accused to have been made voluntarily. There is nothing oppressive which would lead me to exclude them and as a result they can be lead in evidence at trial on the general issue.
- [71] I similarly find that the caution interview and charge statement of the second accused were made voluntarily without oppression and they too are admissible in evidence
- [72] The caution interview and charge statement of the third accused were both voluntarily made and without oppression and they are both admissible in evidence at trial.
- [73] The verbal confession by the first accused after his recapture creates a different set of considerations. The Police evidence relating to the confession is not strong. There is no doubt that he was cautioned again in the vehicle and there is no doubt that he started confessing (to something). The witnesses giving evidence of the verbal were Hindi speaking and the first accused was speaking in Fijian. There was no evidence before me of what the first accused said. In the circumstances I will allow evidence that on recapture and in the vehicle the first accused broke down and started to make admissions. This is *res gestae* evidence and is admissible as such but I will not allow any evidence of what the first accused actually said in his "admissions". The State can take the evidence no further than he "broke" and started to make admissions.

Paul K. Madigan
Judge

At Lautoka

24 January, 2014