

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 119 OF 2009S

**STATE**

**vs**

**RUSIATE VULAONO**

**Counsels** : **Ms. M. Khan and Ms. M. Konarote for State**  
**Mr. A. Naco for Accused**

**Hearing** : **6 June, 2016**

**Ruling** : **6 June, 2016**

**Written Reasons** : **8 July, 2016**

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**WRITTEN REASONS FOR VOIR DIRE RULING**

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1. The accused was charged with two counts of "Rape", contrary to section 149 and 150 of Penal Code, chapter 17, two counts of "Unnatural Offences", contrary to section 175 (a) of the Penal Code, and one count of "Common Assault", contrary to section 244 of the Penal Code.
2. During the police investigation, the accused was caution interviewed by Corporal 3169 Paula Kaikai (PW4) on 19 and 20 September 2009, wherein he allegedly admitted the offences. On 6 June 2016, the accused challenged the admissibility of his alleged confession in a voir dire hearing.

3. The prosecution called 6 witnesses, all police officers. The defence choose to remain silent. I heard the witnesses' evidence and the parties' closing submissions. I ruled the accused's caution interview statements as inadmissible evidence, and directed that the same cannot be used as evidence in the trial proper. I said I would give my written reasons later. Below are my reasons.
4. The law in this area is well settled. On 13<sup>th</sup> July 1984, the Fiji Court of Appeal in **Ganga Ram & Shiu Charan v Reginam**, Criminal Appeal No. 46 of 1983, said the following, *"....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 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 – what has been picturesquely described as the "flattery of hope or the tyranny of fear" Ibrahim v R (1941) AC 599, DPP v Ping Lin (1976) AC 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 the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ C – E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account ...."*
5. In this case, the dispute between the parties was familiar. The police caution interview officer (PW4) said the accused was given his right to counsel, his right to see his relatives and was given the standard rest and meal breaks. He was formally cautioned. He said, the accused co-operated with police and gave his statements voluntarily. The above were confirmed by the police witnessing officer (PW5). Both PW4 and PW5 said they did not assault, threaten or made false promises to the accused while he was in their custody.
6. The accused choose to remain silent and called no witness.
7. I have carefully considered the parties' version of events. I have listened very carefully to the evidence. After considering the authorities mentioned in paragraph 4 hereof, and after looking at all the facts, I have come to the conclusion that the accused did not give his caution interview statements voluntarily and out of his own free will. I therefore ruled his caution interview statements as inadmissible evidence, and the same could not be used in the trial proper.

8. In giving my reasons abovementioned, I bear in mind what the Court of Appeal said in **Sisa Kalisoqo v Reginam**, Criminal Appeal No. 52 of 1984, where their Lordships said: “...*We have of recent times said that in giving a decision after a trial within a trial there are good reasons for the Judge to express himself with an economy of words...*”
9. The above were the reasons for my ruling on 6 June, 2016.



**Salesi Temo**  
**JUDGE**

Solicitor for State : Office of the Director of Public Prosecution, Suva  
Solicitor for Accused : Mr. A. Naco, Barrister and Solicitor, Suva