

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURIDICTION

CRIMINAL CASE NO. HAC 217 OF 2015S

STATE

vs

LEONE ROKOMARAIVALU

Counsels : **Ms. S. Serukai for State**
Accused in Person
Hearings : **6 and 7 March, 2017**
Ruling : **7 March, 2017**

RULING ON VOIR DIRE HEARING

1. The accused was charged with two others on "Aggravated Robbery", contrary to section 311 (1) (a) of the Crimes Decree 2009 (Count No. 1) and "Theft", contrary to section 291 of the above Decree (Count No. 2). It was alleged that, he with two others, on 28 May 2015, at Visama in the Central Division, violently robbed Deo Kumar of \$32,847 worth of properties and before such robbery, used personal violence on Anil Singh.
2. During the police investigation, the accused was caution interviewed by police at the crime office at Nausori Police Station, on 2 and 3 June 2015. In his caution interview statements, the accused allegedly admitted the above offences. On 3 June 2015, the accused was also formally charged by police. In his charge statement, the accused also allegedly admitted the offences.

3. In a voir dire hearing on 6 and 7 March 2017, the accused formally challenged the admissibility of his alleged above admissions, on the ground that the police tricked him into making the above confessions on the ground that they will grant him immunity from prosecution.
4. The prosecution called a total of three witnesses, all police officers. The defence called the accused himself, as their only witness. Altogether, there were 4 witnesses, on whose evidence the court will have to make a decision.
5. The law in this area is well settled. On 13th 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”
6. I had carefully listened to and considered the evidence of the prosecution and defence's witnesses. The accused alleged the police promised him immunity from prosecution in exchange for his alleged confession. He also said, the police gave him 7 body punches when he was arrested on 1 June 2015 at Makoi Service Station. He appeared to say that because of the above, he did not give his alleged confession voluntarily.
7. The police, on the other hand, said, the accused was not assaulted, threatened or made false promises while he was in their custody. They said, he gave his caution interview and charge statements voluntarily and out of his own free will. The police said he was given all his legal rights when caution interviewed and when formally charged. They said, he was formally cautioned and given his rest and meal breaks. They said, when he first appeared in the Nausori Magistrate Court on 4 June 2015, he never complained to the Magistrate of any

untoward police behaviour. They also said, he did not complain to the High Court of any police misbehaviour on 12 June 2015 when he first appeared there.

8. I have carefully considered and compared the parties' evidence. I find the prosecution's witnesses' evidence credible, and I accept them. I find that the police did not assault, threaten or made false promises to the accused during his interview and when formally charged. I find he gave his caution interview and charge statements voluntarily and I declare the same as admissible evidence in the trial proper.
9. Despite making the above decision, my mind is not closed. Depending on the parties' performance in the trial proper and the opinions of the assessors, the acceptance or otherwise of the above alleged confessions in the trial proper, will be a matter for the assessors. I rule so accordingly.



Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Nausori.**
Solicitor for Accused : **In Person**