

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 83 OF 2013

STATE

V

1. Sairusi Qiokata
2. Nimilote Waqavou
3. Rusiate Namilamila
4. Taito Koroitamana
5. Mosese Tuisorisori

Counsel: Mr A. Datt for the State

Ms N. Karan for 1st Accused

Mr R. Vananalagi for 2nd Accused

Ms J. Singh for 3rd, 4th and 5th Accused

Dates of Hearing: 24<sup>th</sup> April, 2017 – 28<sup>th</sup> April, 2017 ; 08<sup>th</sup> May, 2017 – 10<sup>th</sup> May 2017

Date of Ruling : 12th May, 2017

## RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the cautioned interviews and charge statements of the Accused produced at the Vatukoula Police Station.
2. The test of admissibility of all confessional statement made to a police officer is whether that was made freely and not as a result of threats, assaults or inducements made to the Accused by person or persons in authority. Further, oppression or unfairness also leads to the exclusion of the confession. Finally, where the rights of the suspects under the Constitution have been breached, this will lead to the exclusion of the confessions obtained thereby unless the Prosecution can show that the suspect was not thereby prejudiced.
3. What I am required at this stage is to decide whether the interviews were conducted fairly and whether the accused gave the statements voluntarily. If I find that the confessions were obtained violating their constitutional rights, then I can in my discretion exclude the interviews and charge statements.
4. The burden of proving voluntariness, fairness, lack of oppression, compliance with constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
5. All the accused filed *voir dire* grounds and challenged the admissibility of their caution interviews and charge statements on the basis that they were obtained using police brutality.

6. Altogether 22 police officers were called by the Prosecution to prove that accused had given caution statements and charge statements voluntarily. They all said that accused were never oppressed, assaulted or threatened during arrest or while they were in police custody and caution interviews and charging took place in a fair manner.
7. I am not inclined to believe their evidence to be truthful and therefore not satisfied that accused had given their respective caution statements and charge statements voluntarily.
8. Accused, in their respective testimonies described in detail how they were assaulted and threatened during their arrest and whilst being in police custody. Although the evidence of the accused as to assaults was somewhat exaggerated, I can't completely reject their evidence. Burden was always on the prosecution to prove that interviews were conducted voluntarily and fairly.
9. Inspector Mele Bale was the team leader of the arresting team that arrested 1st, 2nd and 3rd accused. He escorted the 5th accused to Nasomo Village to recover some items. He was also the witnessing officer for 4th accused's caution interview. Detective Corporal Eremasi Nagara was the Investigating Officer in this case. He also interviewed 1st accused and witnessed the interview of the 5th accused. He also escorted accused persons.
10. They vehemently denied that accused were assaulted or threatened during arrest or whilst being in police custody. Other police witnesses were called to support these senior officers' evidence.
11. I find the evidence of Prosecution to be inconsistent and implausible.

12. Arresting team consisting of about 20 officers had deployed three vehicles to arrest 1st 2nd and 3rd accused. To effect the arrest of the 3rd accused, the Strike back team from Lautoka had also been deployed. These accused were arrested from their houses and not from a hideout. There is no evidence that 1st -3rd accused had fled their houses in order to evade police or resisted arrest. The circumstances under which the arrests took place had been quite frightening.
  
13. To my surprise, police witnesses were inordinately forgetful of events of their official duties. They are privileged witnesses in the sense that they could peruse notes to refresh their memory for the purpose of giving evidence. In view of this, I found them to be evasive in answering some of crucial questions. For example IP Bale could not recall the accused's name whose interview he had witnessed and the number of officers that formed his arresting team. Sgt. Penaia denied having been involved in any duty in respect of 4th accused Taito Koroitamana. When shown the Station Diary he admitted that he escorted Koroitamana on 8th April 2013 to the scene of robbery at Bajpais for reconstruction. However, they clearly remembered one thing for sure; that no assault took place during arrests or before the interviews.
  
14. IP Bale with his team had escorted the 5<sup>th</sup> accused to recover some items. According to IP Bale's evidence, 5<sup>th</sup> accused had been escorted to his house in Nasomo for this purpose. Stg. Sevuloni Lumi who had accompanied IP Bale gave completely contradictory evidence and said that 5<sup>th</sup> accused was escorted not to Nasomo but to the crime scene at Toko and the recovery was done beside the road.
  
15. IP Bale and other police witnesses who participated with him to arrest the 2nd accused said that 2nd accused was arrested in the morning. However, according to his previous statement, 2nd accused had been arrested at about 20.11 hrs. IP Bale, when questioned about the discrepancy said that his previous statement referred to the second visit they had made to 2<sup>nd</sup> accused's house to recover some

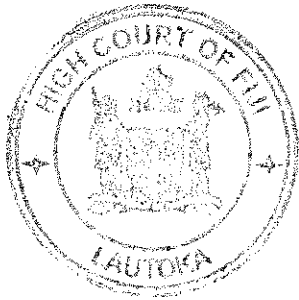
items. However, relevant portion of his statement clearly states that the arrest and recovery took place at the same time.


*"I was leading the team and we used 3 vehicles, fleet 178, fleet 290 and FT 736 at Vunidrovu Vatukoula, arrested one Nimilote and recovered some items from his wife as Nimilote has stated he bought it from his own money".*

16. When shown the Station Diary IP Bale admitted that he escorted 3<sup>rd</sup> accused around 10 a.m. to the Vatuloula Police Bure (where the alleged assaults took place) contradicting his own evidence that he never saw 3<sup>rd</sup> accused after handover to Station Orderly around midnight (12.31 a.m.)
17. IP Bale observed a deep cut on 5<sup>th</sup> accused's ankle. It was bleeding. However, he failed to inquire how this injury came about and whether he needed medical treatment before the interview. According to the cell book column titled "fresh marks of violence", 2<sup>nd</sup> accused had had a cut above his left eye. Witness PC Loame who was in the arresting team was specifically shown that particular entry dated 2<sup>nd</sup> April 2013. None of the police witnesses could recall if 2<sup>nd</sup> accused had a cut above his left eye. Court observed a scar of a healed wound on 4<sup>th</sup> accused's face which he said was a result of a police assault. Police witnesses failed miserably to explain how those injuries came about.
18. Police witnesses who had arrested, escorted and interviewed the 5<sup>th</sup> accused had noted only one injury on 5<sup>th</sup> accused's body (on his ankle). Soon after the interview, the doctor had examined the 5<sup>th</sup> accused at Tavua Sub Divisional Hospital. Doctor's evidence was quite contradictory to evidence of police witnesses. The Doctor had observed bruises and abrasions on 5<sup>th</sup> accused's left cheek, a bruising on his left shoulder and on the left upper arm. She had also observed infected sores on both wrists that looked like handcuffed marks. He also had a wound (laceration) on the right foot and swelling on the left leg. Doctor opined that patient had received some blunt force injuries, mostly to the arms, legs and back.

19. 5th accused had stated to doctor that he was hit with an iron rod and a bat, 3 – 4 days prior to coming to hospital and was complaining of generalized body pains mostly in the legs and the back. He told court in evidence that he was handcuffed at the back and made to travel 4 hours. An escorting officer had also pulled his hands upwards.
  
20. Despite clear medical evidence, police witnesses were trying to suppress the true picture. Part A.4 of the medical report had been filled by escorting officer, PC Vuniani Namua. It reads *'injuries received during his arrest from the villagers in Nairukuruku, Naitasiri in a case of Robbery with Violence'*. When questioned, PC Namua said that he filled the Form on instructions of his superior officers. He also admitted that he put a wrong date. None of the officers who gave evidence had seen 5th accused being assaulted by villagers. If the 5th accused had in fact been assaulted by villagers, what a prudent police officer would have done was to produce the injured to a doctor before the interview is held.
  
21. The robbery had taken place in Toko, a place far removed from the place of arrest (Nairukuruku). Police witnesses failed to explain what prompted the villagers in Nairukuruku to arrest the 5th accused who was only a stranger to that village.
  
22. As per the medical report, 5th accused had not indicated to the doctor as to who was responsible for those injuries although he managed to explain in court in detail how he was assaulted by police officers. Police Officer Namua had been present during medical examination. According to 5th accused, PC Namua was one of the officers who had assaulted. It is quite natural for 5th accused to refrain from revealing to the doctor the name of the perpetrator who was present in the examination room. Although doctor said that PC Namua did not interfere with the examination of the patient, his presence in the examination room itself no doubt constituted interference.

23. For reasons given, I reject evidence of the Prosecution.
24. All the accused gave evidence and described how they were assaulted and threatened by police officers. I have no doubt that they were exaggerating things when they were giving evidence of assaults. Even if I were to reject evidence adduced by defence in its entirety that will not change my mind as the burden was always on the prosecution to prove that no police assault took place and that the interviews were given voluntarily. I am convinced that caution interviews and charge statements of each accused had not been given voluntarily.
25. Prosecution failed to prove its case and discharge the burden beyond reasonable doubt. Therefore I hold caution statements and charge statements in respect of all accused to be inadmissible in evidence.



  
Aruna Aluthge  
Judge

At Lautoka  
12th May, 2017

**Counsel:**

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Accused