

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 39 of 2018**

STATE

v.

1. AMANI MASIKEREI
2. SAMUELA NATOKALAU

**Counsel:** Ms. S. Tivao with Mr. E. Samisoni for State  
Accused 1 In Person  
Mr. K. Maisamoa for 2<sup>nd</sup> Accused

**Hearing:** 18<sup>th</sup> and 19<sup>th</sup> September 2018

**Ruling:** 28<sup>th</sup> September 2018

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**RULING**  
*[Voir Dire]*

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**Introduction**

1. The Prosecution proposes to adduce the caution interview of the second accused in evidence, for which the second accused challenges on the following grounds, *inter alia*;

1. *That the 2<sup>nd</sup> accused admission and confession were obtained by the threat done to the 2<sup>nd</sup> accused by an army officer who accompany the police officers during the raid at the point of the arrest the said officer held up a gun and pointing at the 2<sup>nd</sup> accused forehead that caused the*

*2<sup>nd</sup> accused to be shivering and frighten as a result he confessed at the point of arrest and during the caution interview.*

- 2. The 2<sup>nd</sup> accused's right under Section 13 (1) (a) (ii) and (b) of the 2013 Constitution was not given and properly explained to him during his caution interview.*
  - 3. That there was a breach of his rights under the Judges Rules and Article 14 (3) (g) of the International Covenant on Civil and Political Rights whilst he was charged by Police.*
  - 4. That the 2<sup>nd</sup> accused was assaulted by the police officers at Rarama Settlement in which he was also forced by the police officers to walk to the scene of crime, which he knew nothing about it.*
2. The trial with a trial (*voir dire*) hearing was commenced on the 18th of September 2018 and concluded on 19th of September 2018. Prior to the commencement of the hearing, the learned counsel for the defence sought leave of the court to withdraw the third ground of *voir dire*. The leave was granted accordingly. The Prosecution adduced the evidence of four witnesses and the second accused gave evidence for the defence.
  3. During the course of the hearing, the leaned counsel for the defence made a further application to amend the grounds of *voir dire*, stating that the accused wanted to amend the first ground of *voir dire* by introducing the words “that a police officer from Tactical Unit held up a gun at the forehead of the accused” instead of “an army officer” as stated in the grounds of *voir dire*. The prosecution objected to this application as it would prejudice the case of the prosecution. Having heard the oral submissions of the counsel for the prosecution and the defence, the court refused this application to amend the first ground. Moreover, the defence amended the third ground inserting the word Levukaiyale instead of Rarama settlement with the consent of the prosecution.



4. At the conclusion of the hearing, the counsel for the prosecution and the defence were directed to file their respective written submissions, which they filed as per the directions. Having carefully considered the grounds for *voir dire*, the evidence adduced during the hearing, and the respective written submissions of the parties, I now proceed to pronounce the ruling as follows.

### The Law

5. The Privy Council in Wong Kam – Ming v The Queen (1982) A.C. 247 at 261 has discussed the basic control over admissibility of statement, where it was held that:

*"The basic control over admissibility of statement are found in the evidential rule that an admission must be voluntary i.e. not obtained through violence, fear or prejudice, oppression, threats and promises or other improper inducements. See decision of LORD SUMNER in IBRAHIM v. R (1914-15) AER 874 at 877. It is to the evidence that the court must turn for an answer to the voluntariness of the confessions."*

6. The Fiji Court of Appeal in Shiu Charan v R (F.C.A. Crim. App. 46/83) has discussed the applicable test of admissibility of caution interview of the accused person in evidence at the trial. The Fiji Court of Appeal in Shiu Charan (supra) held that:

*"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 or 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 (1914) AC 599. DPP v Pin 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." (State v Rokotuiwai - [1996] FJHC 159; HAC0009r.95s (21 November 1996)."*

7. The Fiji Court of Appeal in **Fraser v State ([2012] FJCA 91; AAU24.2010 (30 November 2012))** held that:

*"The court shall not allow a confession to be given in evidence against him unless the prosecution proves beyond reasonable doubt that the confession was not obtained (a) by oppression of the person who made it (b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in consequence thereof."*

8. The test enunciated in **Shiu Charan (supra)** and **Fraser (supra)** constitutes two components. The first is the test of oppression. The court is required to satisfy that the statement in the caution interview had been taken without any form of force, threats, intimidation, or inducement by offer of any advantage. The second component is that, even though the court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation or inducement, it is still required to satisfy that no any general grounds of unfairness existed before or during the recording of the caution interview.
9. It is the onus of the prosecution to prove beyond reasonable doubt that the caution interview of the accused was recorded voluntarily and under fair and just circumstance.

### **First Ground**

10. The first ground is based upon the allegation that the accused was threatened by an army officer, pointing a gun at his forehead upon his arrest on the 15th of January 2018. Due to the threat of this army officer, the accused made this confession in his caution interview.
11. The first and second witnesses of the prosecution, who were present during the arrest of the accused on the 15th of January 2018 and involved in escorting the accused to the Kadavu



police station, specifically stated that army officers were not involved in this operation. Only the officers from the Tactical Unit of the Police Mobile Unit were present during the operation. The defence neither challenged nor suggested otherwise stating that Army Officers with guns were present during this operation. Moreover, the accused in his evidence did not mention that an army officer threatened him with a gun pointing at his forehead. In view of these facts, I am satisfied that the prosecution has proven beyond reasonable doubt that the accused was not threatened by an army officer with a gun, pointing at his forehead on the 15th of January 2015.

### Second Ground

12. The second ground is founded on the contention that the caution interview was conducted in breach of the rights given to the accused under Section 13 (1) (a) (ii) and (b) of the Constitution. Section 13 (1) (a) (ii) and (b) of the Constitution states that:

*Every person who is arrested or detained has the right-*

- a) To be informed promptly, in a language that he or she understands of-
    - ii) the right to be remain silent,
  - b) To remain silent,
13. The interviewing officer, PC Ovini and the Witnessing officer WPC Jojana in their respective evidence specifically stated that the accused was explained and given all his rights, including his right to remain in silent. More importantly, the accused in his evidence admitted that he was given his right to remain silent and he chose not to exercise it during the recording of his caution interview. Therefore, I find the Prosecution has proven beyond reasonable doubt that the accused was properly explained and given his rights as stipulated under Section 13 (1) (a) (ii) and (b) of the Constitution.

### Third Ground

14. The third ground is based upon the allegation that the accused was assaulted at Levukaiyale village, while he was kept at the Police tent.
15. The first and second witnesses of the prosecution deny this allegation and stated that none of the police officers who involved in this operation assaulted the accused during the arrest. Both of these witnesses further said that the accused was not assaulted while he was waiting at the Police tent, to be escort to the Kadavu Police station. I am satisfied with the evidence of these two witnesses as they were straight and coherence.
16. The learned counsel for the defence submitted that the evidence given by the first witness of the prosecution is not consistence with his statement which he made to the police. The learned counsel submits that the first witness in his evidence said that the second witness of the prosecution handed over the accused to Kadavu Police Station. However, the statement made by the first witness states that they handed the accused to the Kadavu Police Station. Both the witnesses in their evidence said that both of them were involved in escorting the accused to the Police Station. Therefore, I do not find this inconsistency or omission has any direct relevance to this matter.
17. I accordingly accept the evidence of the prosecution witnesses as true and credible evidence.
18. The accused claims that he was assaulted while he was waiting at the police tent. The accused admitted that he was allowed to talk to his lawyer before the commencement of the caution interview. There is no evidence that the lawyer of the accused had made any complaint or any issues with the police about any alleged assault.
19. In view of these reasons, I am satisfied that the prosecution has proven beyond reasonable doubt that the accused was not assaulted at the Levukaiyale village on the 15th of January 2018.

20. Accordingly, I am satisfied that the prosecution has proven beyond reasonable doubt that the accused voluntarily gave his statement in the caution interview and it was recorded under fair and just circumstances.
21. In conclusion, I hold that the record of the caution interview of the second accused is admissible in evidence at the trial.



  
R.D.R.T. Rajasinghe  
Judge

At Suva  
28<sup>th</sup> September 2018

Solicitors  
Office of the Director of Public Prosecutions for the State.  
Accused I In Person.  
Maisamoa & Associates for Accused 2.