

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 403 OF 2016S

STATE

vs

- 1. ASESELA NIUBASAGA**
- 2. SAMISONI WAQAVATU**

Counsels : **Mr. S. Shah for State**
Mr. J. Daurewa for Accused No. 1
Mr. N. Tuifagalele for Accused No. 2

Hearing : **2, 3, 4 and 5 October, 2018**

Ruling : **5 October, 2018**

Written Reasons : **15 October, 2018**

WRITTEN REASONS FOR VOIR DIRE RULING

1. Both accuseds were charged with "aggravated robbery", contrary to section 311(1)(a) of the Crimes Act 2009. It was alleged that, the two accuseds, with others, broke into the complainant's house early morning on 28 October 2016, attacked the complainant and his wife, ransacked their house, and stole their properties, as itemized in the information.
2. During the police investigation, both accuseds were allegedly caution interviewed by police on 3 and 4 November 2016. During the interview, both accuseds allegedly admitted the offence to police. In a voir dire hearing on 2, 3, 4 and 5 October 2018, the accuseds challenged the admissibility of their police caution interview statements.
3. The prosecution called 6 witnesses, 4 police officers, 1 ex-police officer and one doctor. Both accuseds gave sworn evidence and accused no. 2 called his mother (DW3) as his witness.

Accused no. 1 did not call any witness. Altogether, there were 9 witnesses, on whose evidence, the court will have to make a decision.

4. 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"
5. I have carefully listened to and considered the evidence of all the prosecution and defence's witnesses. I have carefully examined their demeanours when they were giving evidence in court. I have carefully considered the parties closing submissions.
6. The dispute between the parties were somewhat similar to what transpires in a voir dire hearing. Both accuseds alleged the police repeatedly assaulted and threatened them to confess, while they were in police custody. They said, they were so frightened that they confessed. They said their confessions were not given voluntarily nor given out of their own free will. The police witnesses said the opposite. They said, they did not assault, threaten nor made any promises to the accuseds, while they were in police custody.
7. I have carefully listened to and considered the evidence of Doctor Ashneel Singh (PW6). He medically examined both accuseds on 6 November 2016. PW6 said he saw no injuries on both accuseds.
8. After looking at all the evidence, I accepted the prosecution's witnesses' version of events, and ruled the accuseds' caution interview statements as admissible evidence. However, I said, the acceptance or otherwise of the accuseds' alleged confessions, will be a matter for the assessors at the trial proper.

9. The above were the reasons for my ruling on 5 October 2018.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused No. 1 : **Legal Aid Commission, Suva**
Solicitor for Accused No. 2 : **N. Tuifagalele, Barrister and Solicitor, Suva.**