

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 291 OF 2016S

STATE

VS

1. LUKE SENICEVA
3. VILIAME MOTOKAINAVA

Counsels : Ms. M. Chowdhury for State
Ms. N. Mishra for Accused No. 1
Ms. S. Daunivesi for Accused No. 2

Hearings : 20, 21, 22 and 25 February, 2019

Ruling : 25 February, 2019

Written Reasons: 4 March, 2019

WRITTEN REASONS FOR VOIR DIRE RULING

1. The two accuseds were jointly charged with "aggravated burglary", contrary to section 313 (1) (a) of the Crimes Act 2009 (count no. 1) and "theft", contrary to section 291 (1) of the Crimes Act 2009 (count no. 2). It was alleged that the two accuseds, in company of each other, between 1 and 4 July 2016, at Nasinu in the Central Division, broke into Tamavua Primary School, as trespassers with intent to commit theft, and stole the items mentioned in count no. 2.

2. During the police investigation, the two accuseds were caution interviewed by police at Valelevu Police Station, from 6 to 8 and 29 July 2016. In their police caution interview statements, both accuseds allegedly admitted the offences to police. In a voir dire on 20, 21, 22 and 25 February 2019, both accuseds challenged the admissibility of their police caution interview statements.
3. The prosecution called two police officer, first, DC 2659, Eliki Kaumaitotoya (PW1), and second, PC 4663, Taitusi Lualala (PW2). The defence called both accuseds as witnesses. Accused No. 1 was DW1, and Accused No. 2 was DW2. Altogether, there were four 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 91980) 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 prosecution and the accuseds in the voir dire hearing was typical of most voir dire trials. The accuseds said the police repeatedly assaulted them while they were in their custody. They said, the police gave them several punches. They said, they were

frightened and scared. As a result, they confessed to the police. They said, they did not give their caution interview statements voluntarily, and they were given without their own free will.

7. The police witnesses said exactly the opposite. They said, the accuseds were formally caution and they were given their legal rights. They said, they co-operated with the police during the interview. They said, they did not assault or threaten them, nor made false promises to them, while they were in their custody. They said, the accuseds gave their police caution interview statements voluntarily and out of their own free will.
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 25 February, 2019.



Salesi Temo
JUDGE

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