

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 44 of 2018

[CRIMINAL JURISDICTION]

STATE

V

1. ANASA LENIKALI
2. JOELI CAMA
3. SERU KOROI

Counsel : Ms. W. Elo with Mr. I. Rakaria for State
Ms. A. Prakash for 1st Accused
Mr. K. Prasad for 2nd Accused
Ms. T. Kean for 3rd Accused

Hearing on : 11 - 22 February 2019

Ruling on : 25 February 2019

VOIR DIRE RULING

1. The above named accused are charged with the following offence;

COUNT 1

Statement of Offence

Aggravated Robbery: contrary to section 311 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ANASA LENIKALI, JOELI CAMA and SERU KOROI on the 17th day of January 2018 in Suva in the Central Division, in the company of each other, robbed Atish Rathore of \$600.00 cash and 1 x Apple Ipad valued at \$800.00, all to the total value of \$1,400.0, the property of Atish Rathore.

2. The prosecution is relying on the alleged admissions recorded in the cautioned interview statements of the three accused persons and in the charge statements of the first and the second accused. Each accused challenges the admissibility of his cautioned interview statement on the basis of involuntariness. The first accused says his charge statement was fabricated by the police and the second accused challenges the admissibility of his charge statement, again, based on involuntariness. The third accused in his charge statement had denied committing any offence and he claims that it was made voluntarily.
3. The prosecution called 13 witnesses. The first accused did not give any evidence or call witnesses. The second and third accused gave evidence.
4. In *Ganga Ram and Shiu Charan v. R* (Criminal appeal 46 of 1983 delivered on 13th July 1984), the Fiji Court of Appeal said thus;

"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 (sic) 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. Ping Lin [1976] AC 574.

Secondly, even if such voluntariness is established there is also a need to consider whether the more general ground of unfairness exists in the way in which police

behaved, perhaps by breach of the Judges' rules falling short of overbearing will, by trickery or by unfair treatment. R v. Sang [1980] AC 402, 436 at C-E. This is a matter of overriding discretion and one cannot specifically categorise the matters which might be taken into account". [Emphasis added]

5. When an accused challenges the admissibility of the admissions recorded in his cautioned interview and/or the charge statement as the case may be, alleging that the confessions were not made voluntarily, the prosecution should prove beyond reasonable doubt that the said admissions were made voluntarily, if they require the said admissions to be adduced as evidence against that accused.
6. This onus of proving that the admissions recorded in a cautioned interview statement or a charge statement were made voluntarily is not discharged by calling police officers who were involved with the investigation including the officers who recorded the relevant statements as prosecution witnesses and getting them to simply deny the allegations listed as grounds of *voir dire*.
7. In a *voir dire* held to determine whether the admissions made in a particular cautioned interview or a charge statement by an accused are admissible in evidence, the prosecution should demonstrate to the court the manner that accused was handled and the steps taken in relation to the accused from the time of arrest to the time the accused was produced in court. The aim should be to establish beyond reasonable doubt that the proper procedure was followed and there was no possibility for any oppression or unfair treatment including the events alleged in the grounds of *voir dire* to have taken place.
8. It is noted in many cases that the prosecutors treat the station diary entries, cell book entries, meal book entries and the entries in the running sheets as records that should

only be used by the defence to cross-examine the prosecution witnesses and simply overlook to make use of such records in presenting their case.

9. In the instant case, the voir dire grounds are as follows;

First Accused

- (1) *The Accused during the time of arrest at 4.00am on 17 January, 2018 was sworn at by Manasa Bainimarama and threatened that he would be killed if he did not tell the truth.*
- (2) *At Nabua Police Station Cell, the Accused stripped naked and searched and water was sprayed on him with a hose by two i-taukei Police Officers.*
- (3) *On the same day at 7.00am the Accused was taken to Samabula Police Station where Police Officer Sukulu slapped both the Accused's ears and asked who the other 2 other persons involved in the alleged robbery were.*
- (4) *The Accused was later taken in the Police vehicle to Lakeba Street and shown a house by 3 Police Officers namely, Sukulu, Vilikesa and Shamal Muthi and told to admit to breaking into that house or else he may end up dead like others. He was later taken to Ram Lakhan Park in the vehicle and repeatedly sworn at and asked again who the other 2 people that were involved in the alleged crime were.*
- (5) *The Accused was then taken to Samabula Police station again and locked him in a room on top and handcuffed and repeatedly sworn at and asked again who the other 2 person that were involved in the alleged robbery were.*
- (6) *Police Officers Vilikesa and Shamal Muthi then took all the Accused's clothes off and rubbed chillies in his anus and was told to admit to the robbery and reveal the names of the 2 other persons involved in the alleged robbery.*
- (7) *The Accused was Caution Interviewed by Shamal Authi and a Witnessing Officer while he was handcuffed.*
- (8) *The Accused's rights were not explained to him.*
- (9) *He opted to be interviewed under caution in the i-taukei language but was interviewed in the English language.*
- (10) *The Accused was not given food at Samabula Police Station on 17 January, 2018.*
- (11) *The Accused was taken to Totogo Police Station after the Caution Interview was suspended when 2 Police Officers in civilian clothes took his photographs and told him to tell the truth in his interview and not deny anything.*
- (12) *His Caution Interview continued at Samabula Police Station on 18 January, 2018 while he was still handcuffed.*
- (13) *He was not given a chance to read his Caution Interview and Charge Statement and was only told to sign.*

Second Accused

Arrest:

- (1) *The Police Officers arresting Joeli Cama had not informed on why Joeli Cama was being arrested on 7 January 2018.*
- (2) *The Police Officers arresting Joeli Cama included DC 4643 Vilikesa who together with the arresting officers, threw Joeli Cama into the Police Vehicle on 17 January 2018 at the scene of arrest in Mead Road Nabua, Suva.*

Transit:

- (3) *On transit from the scene of arrest to the Police Station, the arresting officers punched Joeli Cama and told him to confess to the allegation with threats by these arresting Police Officers that if Joeli Cama does not confess, the arresting Police Officers would continue with the assault.*

Interview:

- (4) *On 17 January 2018, upon arrival at the Samabula Police Station, the Caution Interview of Joeli Cama commenced and was conducted by DC 4643 Vilikesa. The Caution Interview of Joeli Cama continued on 18 January 2018. DC 4643 Vilikesa made continuous threats of assaulting Joeli Cama if Joeli Cama did not confess to the offending; and DC 4643 Vilikesa also made promises to dismiss the allegation against Joeli Cama if Joeli Cama confessed to the offending.*
- (5) *As a result of the events of 17 January 2018 and 18 January 2018, Joeli Cama confessed to the allegations in his caution interview involuntarily through fear of physical harm from the conduct of the Police Officers beginning from the place of arrest which continued in the Police Vehicle in the transit from the place of arrest to Samabula Police Station and during the duration of the interview.*

Third Accused

- (1) *That on 17th January, 2018 at 8am some police officers had come to his house while he was having breakfast and aggressively dragged him out whilst also assaulting and threatening him too. They punched him on the chest and forced him to admit to the offence. These police officers put him in a white twin cab. These police officers were Mulesh, Vilikesa, Shamal Murthu, Simon Chand, SC Simone and Josata Soro. When he got into the car he sat in between Josata Soro and another police officer and he was further assaulted and threatened on his way there. There were a large number of police officers who came to arrest the accused and this instilled fear in the accused. Whilst he was sitting in the vehicle they started told him that he was the main suspect. They took him to Samabula police station.*
- (2) *That the accused was not given his rights upon being arrested. He was also not informed of the reason for his arrest.*
- (3) *Once he was locked in the cell they also assaulted him and threatened him in itaukei.*

They said "Fuck your mother", "make things easier for us if not we will kill you". They had tied a cloth drenched in chillies around his mouth to muffle the sounds he was making from the punches thrown at him. The entire time they threatened him to confess.

- (4) That the accused was told that he would be taken to Raiwaqa but they took him to a ground called Rama Khan Road in Samabula. While in the twin cab two other police officers pulled up and they got off and they came and threatened him. They also started smacking him with a police baton. He was told that if he made their jobs hard they would keep abusing him and he would die.*
 - (5) That he was then taken to Raiwaqa police station and locked in the cell with one Maleli Naulivou who witnessed the assault. The police officers then came into the cell and started threatening and kicking him. The names of the police officers are unknown but can be identified by their faces by the accused.*
 - (6) Josia Soro then came to pick the accused to be taken back to Samabula police station. On his way back the accused requested to be taken to the hospital but they refused and said that he would just die in the cell. His face was swollen from the assault.*
 - (7) That at 4pm on the 17th of January, 2018 the accused was caution interviewed at Samabula with his hands and legs cuffed. The interviewing and witnessing officer told him that if he confessed he would be released.*
 - (8) Whilst the interview was being conducted he was questioned on the alleged incident, the accused denied knowing anything about the alleged incident however they threatened him and out of fear he admitted to the allegation.*
 - (9) That the accused also requested to be interviewed in itaukei but Mr. Soro said it would be easier to be interviewed in the English language. Later he was threatened and told to just sign where applicable.*
 - (10) Out of the things that happened to the accused he was scared and admitted everything.*
 - (11) That the accused states no meals were given to him whilst he was kept at Samabula police station. He was not given any meals when he was brought to the police station on Wednesday. He was not given meals until Thursday and Friday.*
 - (12) That the accused suffered injuries and would walk in pain because he was hit with a baton but he was denied medical attention.*
 - (13) He was not given any mattress or blanket and had to sleep on the cold concrete floor.*
 - (14) That he was kept at the police station for more than 48 hours.*
10. According to the prosecution, the first accused was arrested on 17/01/18 between 4.00am and 4.30am. PW 4 said that PW 9 arrested the first accused; but PW9 said that it was PW 4 who arrested the accused.

11. After arrest the first accused was brought to Samabula Police Station but again taken to Nabua Police Station. PW4 and PW 9 said that this was necessary as the Samabula Police Station Cell was full. There is an entry in the Samabula Station Diary to the effect that the accused was brought in to the Samabula Police Station at 12.55pm on 17/01/18. No evidence was adduced by the prosecution to explain the manner the first accused was treated from around 4.30 am to 12.55pm on 17/01/18.
12. Then there is an entry in the Samabula Cell Book which states that the first accused was locked in the cell at 01.24pm. The time the cautioned interview of the first accused had commenced was 05.18pm on 17/01/18. It was pointed out on behalf of the first accused that there is no entry which indicates that the first accused was taken out of the cell for questioning on 17/01/18.
13. The first accused had been taken for a medical examination after his cautioned interview was recorded where the doctor had prescribed antibiotics and pain relief medication. The injuries noted by the doctor are said to have been inflicted at the time the offence was committed. Based on this evidence, the counsel for the first accused pointed out that the first accused needed medical attention even before his cautioned interview commenced and therefore the circumstances under which the said cautioned interview was recorded may have been oppressive.
14. According to the prosecution, the second and third accused were arrested based on the information given by the first accused in his cautioned interview. It is pertinent to note that, according to the Station Diary at Samabula Police Station, second and third accused were brought to the station after arrest at 2.06pm on 17/01/18. The cautioned interview of the second accused had commenced at 4.55pm and that of the third accused at 4.00pm on 17/01/18, whereas the cautioned interview of the first accused had commenced at 5.18pm on 17/01/18. Accordingly, given the entries made, the

second and the third accused had been arrested and interviewed under caution before the first accused was interviewed under caution.

15. The reason given by the prosecution witnesses for the first accused to be kept for around 12 hours before he was interviewed was that the first accused was given time to rest because he was under the influence of liquor. According to certain prosecution witnesses, the second and third accused were also under the influence of liquor when they were arrested. But their interviews had commenced within less than 3 hours after arrest. However, the relevant prosecution witnesses agreed that there were no entries which indicate that either the first accused or the second accused was under the influence of liquor when they were arrested. Further, PW11 said in his evidence that the first accused was calm and sober when the first accused was escorted to the Samabula Police Station.
16. There were many discrepancies between the time noted in the cautioned interview statements and the corresponding entries in the station diaries and the cell books, and there were no entries in relation to certain events involving the three accused. No acceptable explanation was offered by the prosecution witnesses regarding those inconsistencies. Instead, the prosecution witnesses, when questioned, said that it was the responsibility of the station orderlies to maintain proper records. None of the station orderlies were called as prosecution witnesses to provide any explanation.
17. The evidence presented by the prosecution also revealed that a microwave was recovered from the residence of the second accused, after he was arrested. According to the prosecution witnesses, the second accused informed one of the police officers about this microwave while the second accused was alone inside the police vehicle with the said officer, waiting for the third accused to be brought in and thereafter the second accused voluntarily handed over this microwave to the police when the second

accused was again taken to his house. In their evidence, the relevant prosecution witnesses denied the existence of a search warrant in relation to a microwave said to be in the possession of the second accused until that search warrant was shown to them. It is pertinent to note that the police officer on whose instance this search warrant had been issued was also among the witnesses who first denied the existence of such search warrant.

18. All in all, I am not convinced that the prosecution has established beyond reasonable doubt that the cautioned interview statements of the three accused and the charge statement of the second accused were made voluntarily. Therefore, I hereby rule them inadmissible.




Vincent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for State.
Legal Aid Commission for All Accused.