

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 125 of 2016

BETWEEN : STATE

AND : 1. MESAKE SINU LELEWASA
2. SENIVILATI RATUBALAVU

Counsel : Ms Navia for the State
Ms Vulimainadave for the Accused

Dates of Hearing : 10 April 2019

Date of Ruling : 01 May 2019

VOIR DIRE RULING

1. The accused persons in this case are indicted for one count of Aggravated Robbery contrary to Section 311 (1) (a) of the Crimes Act.
2. On the 15th May 2017, the following grounds of voir dire were filed on behalf of the 2nd accused:

1. *That the accused was threatened by the DC 3525 Mataiasi to confess by uttering the words "if you don't confess you will end up like Suka". The same said Officer threatened him when he choose to remain silent saying "Legal Aid has no power here, we the power and we can force you speak if we want to".*
 2. *That the accused felt oppressed as the above named officer would not allow him to eat until he signed the Caution Interview.*
 3. *That there was a breach of his Constitutional Rights under Section 13 (d) of the Constitution of the Republic of Fiji 2013.*
3. This case was taken up for voir dire hearing on the 10th April 2019. The Prosecution called two witnesses.
 4. According to the evidence of DC 3525 Mataiasi, he has interviewed the second accused under caution. The witness said that the 2nd accused looked normal and he was comfortable during the caution interview. He also said that all the rights were given to the 2nd accused and breaks were given to have his meals. He said that he did not threaten the 2nd accused to confess. The witness gave evidence that the 2nd accused voluntarily signed the caution interview.
 5. During the cross-examination, the witness confirmed that Constable Viliame was the witnessing officer during the interview of the 2nd accused. Further in response to the questions put by the counsel for the 2nd accused, he said that he complied with the Judge's Rules and the 2nd accused was even given a chance to speak to a Legal Aid lawyer. The witness denied that he threatened the 2nd accused by saying *"if you don't confess, you will end up like Suka"*. The witness said he doesn't even know who Suka is. The witness denied that the 2nd accused wanted to remain

silent and he denied that he threatened the 2nd accused that he would not allow the 2nd accused to have his meals until the Caution Interview is signed.

6. The Prosecution witness Detective 4222 Viliame Uqueqe gave evidence that he was present as the Witnessing Officer when the 2nd accused was interviewed. He confirmed that the 2nd accused appeared normal. He also said that neither DC Mataiasi nor him threatened the 2nd accused during the caution interview. He further confirmed that the 2nd accused was given his rights and he was given all his meals during the interview.
7. During the cross-examination, the witness denied that DC Mataiasi threatened the 2nd accused by uttering the words *"if you don't confess, you will end up like Suka"*. He also denied that the Interviewing Officer threatened the 2nd accused by saying, *"Legal Aid has no power here"*.
8. After the Prosecution closed its case, the 2nd accused decided to remain silent. Also, no witnesses were called to give evidence on behalf of the 2nd accused.
9. I have considered the evidence adduced by the Prosecution. The Prosecution witnesses corroborated each other's evidence and their evidence could not be discredited. Although it was alleged that the 2nd accused was threatened, oppressed and his Constitutional Rights under Section 13 (d) of the Constitution were breached, I am satisfied that the Prosecution has proved beyond reasonable doubt that no such things occurred during the interview.
10. I am satisfied that the Prosecution has proved beyond reasonable doubt that the answers recorded in the interview were given by the accused voluntarily. Further I am satisfied that the Prosecution has proved beyond reasonable doubt that those answers recorded were not obtained through oppression or by any other unfair manner.

11. In the circumstances, I decide that the Caution Interview of the 2nd accused recorded on the 08th June 2016 is admissible in evidence.



Rangajeeva Wimalasena
Acting Judge

At Lautoka
01st May 2019

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