

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

High Court Criminal Case No. HAC 49 of 2014

BETWEEN : STATE

AND : 1. JANARDHAN
2. RONIL KUMAR
3. PAULIASI NAUASARA
4. EMORI LAQAI
5. SHIU LINGAM

Counsel : Mr Niudamu for the State
Ms Vulimainadave for the 1st Accused
In Person for the 2nd Accused
Mr Dinati for the 3rd Accused
Ms Karan for the 4th Accused
Ms Volau for the 5th Accused

Dates of Hearing : 15, 16, 17, 18, 23, and 24 April 2019

Date of Ruling : 25 June 2019

RULING ON VOIR DIRE

1. The Accused persons are indicted for one count of aggravated robbery contrary to Section 311(1)(a) of the Crimes Act.

2. The First, Second and the Fifth Accused persons filed voir dire grounds as the State has indicated their intention to rely on the admissions. The voir dire hearing was commenced on 15 April 2019 and was concluded on 24 April 2019. The Prosecution called 12 witnesses. The First Accused gave evidence and the Second Accused remained silent. The Fifth Accused and his wife gave evidence. Further a medical witness was called to give evidence on behalf of the Fifth Accused.
3. In *Ganga Ram and Shiu Charan vs. R*, Criminal Appeal No. AAU 46 of 1983 the following two tests are formulated in determining voluntariness of a confessionary statement;

"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 in 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 unfairness exists in the way in which the police behaved, perhaps by reach of the judges rules failing short of overbearing will, by trickery or by unfair treatment. Regina v Sang(1980) AC 4023"

4. I will first consider the voir dire grounds filed by the First Accused, Janardhan. The following voir dire grounds were filed on behalf of the first Accused;
 - i) That before the caution interview, he requested a male itaukei Police Officer to be taken to the hospital but was told to wait as they do not have any transport.
 - ii) That on 18th April 2014, during the caution interview, commencing at Question 28 till the end of the interview, confessions and signatures of the accused were involuntary since

they have been obtained as a result of being punched on the back and stomach very hard by 10-12 Police Officers who were present during the interview at Lautoka Police Station.

- iii) That the Police Officers slapped his head 6-7 times during the interview.
- iv) That during the interview our client's hands were handcuffed at the back.
- v) That the Police Officers twisted our client's arms very hard to the back then pulled it up and pressed his back very hard 2-3 times.
- vi) That the physical assaults only stopped if he admits in his answers to the questions during the interview and would continue whenever he denies any questions posed to him.
- vii) That he also wanted to speak to the Officer in Charge as he was complaining of body pains but his request was denied.
- viii) That during his charging interview, he was really frightened of further assaults from the Police Officers that he made those admissions in his charge statement.
- ix) That his request to be taken for to the hospital was never even noted down in his caution interview or charge statement.
- x) That his meals whilst being kept in Police custody were not provided consistently.
- xi) That he was not allowed to have his shower/baths whilst in Police custody.
- xii) That he was not allowed to contact/call his friends, family or relatives nor were they allowed to see him whilst in Police custody.

5. The Prosecution called the interviewing officer of the First Accused. Cpl 2932 Mohammed Shameem gave evidence that he interviewed the first Accused. The witness said that the First Accused was not assaulted, threatened or intimidated during the interview by him or by any other officer. He denied the allegations in the voir dire grounds. However, he said that there was no witnessing officer present due to shortage of manpower. He said that the First Accused was given all his rights and all the meals were provided. Further the witness said that the First Accused did not make any request for him to be taken to the Hospital.
6. During the cross examination it was suggested that the First Accused was not given lunch during the interview. The witness said that three breaks were given and in one of those breaks the First Accused was given his lunch. He also said that although it is not recorded in the interview, it is reflected in the station diary. However, the Prosecution could not produce the station diary to court.
7. The Prosecution witness, Vedh Prakash gave evidence that on 19 April 2014 he formally charged the First Accused. He said that there was a witnessing officer, but he cannot recall the name. During the cross examination the witness denied that the First Accused complained of having any body pains.
8. I have considered the evidence given by the First Accused. Under cross examination he took a totally contrary stance to what is stated in the voir dire grounds. He denied that he was assaulted during the interview. He admitted that his hands were not handcuffed at the back. He changed his story and said that he was assaulted before the interview. However, he admitted that he was given the right to remain silent, right to have a lawyer of his own choice or from the Legal Aid Commission. He said that when he was asked by the interviewing officer whether he was suffering from any sickness he answered in negative. He admitted that that he signed the caution interview and further said that the answers given at the interview are his own answers.

9. The First Accused was asked during the cross examination as to why he told the lawyer that he was assaulted during the interview as he admitted in court that he was not assaulted during the interview. He answered as follows in a very unconvincing manner;

“ I can’t recall my Lord, maybe she has asked me and I just said it.”

10. Therefore, it is very clear that the allegations put forward by the First Accused are frivolous and baseless. Further he was asked as to why he did not complain about the alleged assaults to the Magistrate when he was produced to Court. The First Accused initially said that he was not given a chance to say anything. But later when he was confronted with the other things that he said in Court the First Accused responded as follows;

Q: But you told the Magistrate you were residing at Natabua seaside?

A: Yes

Q: And you also told the Magistrate you were 42 married, 3 children?

A: Yes

Q: And you told the Magistrate it was your first offence, still remember that ?

A: Yes

Q: But you never told the Magistrate that the police had assaulted you, you had asked to be taken to hospital?

A: That time I did not say anything because it was the first time I came to court and I couldn’t think properly.

Q: But would you think Mr Janardhan that if a police officer as you have alleged 10 to 12 police officers assaulting you, would you think it would have been reasonable to inform the Magistrate?

A: It was Sunday my Lord and Magistrate was not sitting that long he just took our names and after that he left.

Q: So you confirm you did not make any complaints against police to the Magistrate?

A: Yes

11. In any event I have considered whether the confession of the First Accused had been taken by use of force, threats of prejudice or inducement by offer of some advantage or by tyranny of fear. I am satisfied that the Prosecution witnesses were credible and no force, threat, intimidation was exerted on the First Accused before, during or after the recording of the caution interview or the charge statement. Further I am satisfied that the Prosecution proved that there is nothing oppressive or in breach of constitutional duty and the caution interview and the charge statements of the First Accused were obtained under fair circumstances.

12. Therefore, I decide that the caution interview and charge statements of the First Accused are admissible in evidence.

13. I will now consider the voir dire grounds filed by the Second Accused.

- i) That I was taken to the Lautoka Police Station for questioning and assaulted by the Officers, for which a report was lodged on 17th April, 2014 at about 05.30 pm.
- ii) That at the time of the caution interview, I was further assaulted by Police Officers and was forced to admit to the charge and was slapped and punched on the nose, ears and cheeks. As a result, the accused sustained serious injuries to his face and body.
- iii) That I was denied the right to consult a lawyer prior to and at the time of the caution interview being taken.

- iv) That my admission in the caution interview and charge statement is fabricated and I was isolated and detained at an unknown place from the time of my arrest until I was produced in Court.
- v) That I was denied basic health care when I requested for it.
- vi) That I was never charged at all, and it is highly contended that the charge statement is a fabricated material which the State is relying on as their evidence.
- vii) That the investigators were in direct breach of Section 76 (2) (a) and (b) and Section 76 (3) of the Police and Criminal Evidence Act 1984 (PACE).

14. The Prosecution witness, D/Sgt Arvind Singh gave evidence that he conducted the caution interview of the Second Accused on 18 April 2014. He said that the Second Accused was not assaulted, intimidated, coerced or oppressed before or during the interview. According to the interviewing officer the Second Accused had been cooperative. The witness said that the Second Accused did not complain of any assault or force.

15. During the cross examination the Second Accused questioned the witness about how he would have arranged Legal Aid on a public holiday. The witness responded that the Legal Aid services can be arranged during 7 days a week. Further the Second Accused suggested that he was threatened and intimidated during the interview and the witness denied the same. However, the Second Accused did not even suggest that he was assaulted during the interview although he has alleged that in his voir dire grounds.

16. The Prosecution witness, Marika Qalocava gave evidence that he was the witnessing officer for the Second Accused's caution interview. He corroborated the evidence of the interviewing officer and said that the Second Accused was given all his rights and no threat or assault was done to him. During the cross examination it was suggested to the witness that the Second Accused was

threatened during the interview to admit the offence. However, the witness denied the suggestion and said that the Second Accused was cooperating.

17. When D/Sgt Arvind Singh was cross examined by the Second Accused it was put to him that one DC Farasiko was threatening him to admit the offence. The Prosecution called Cpl 4189 Farasiko Saverio and he gave evidence that on 18 April 2014 he was present when the Second Accused was interviewed. He said that he did not assault the Second Accused or witness anyone assaulting him. Further he said that no inducement, duress or promise was exerted on the Second Accused. The Second Accused did not even cross examine the witness although he alleged earlier that the officer Farasiko threatened him.

18. The Prosecution called Cpl 3860 Sailasa, who formally charged the Second Accused. Constable Sailasa gave evidence that on 19 April 2014 he formally charged the Second Accused. He said that no force, threat, inducement or promise was exerted on the Second Accused. The witness further said that although Sgt Driu was the witnessing officer he forgot to give it to Sgt Driu to sign the charge statement.

19. During the cross examination the Second Accused brought to the notice of the Court that the copy of the charge statement disclosed to him does not bear the signature of Cpl Sailasa. However, the charge statement tendered as Exhibit4 bears his signature. The witness said that he does not know how an unsigned copy of the charge statement was received by the Second Accused. During the re-examination the witness confirmed that although the copy which is in the possession of the Second Accused does not bear his signature, the contents are the same. Further I have perused both documents and it appears that the Second Accused's signature is present in both documents. He did not dispute that it was not his signature. Further the Second Accused did not dispute that the contents are also different in the two documents except for the signature of Cpl Sailasa. Regardless of how the Second Accused came into possession of an unsigned copy of the charge statement, I have no reasons to believe that unfair

tactics were used to record the charge statement as the contents are the same and the Second Accused has signed in both documents. Further the evidence presented by the Prosecution that no threat, force, inducement or false promises were made, could not be challenged by the Second Accused.

20. I have considered the evidence adduced by the Prosecution and the voir dire grounds of the Second Accused. I am satisfied that the Prosecution proved beyond reasonable doubt that no assault, threat, intimidation or false promise was used on the Second Accused. Further I am satisfied that the Second Accused was given all his rights and he is not prejudiced by any unfair circumstances when the statements were recorded.

21. For the reasons discussed above I decide that the caution interview statement and the charge statement of the Second Accused are admissible in evidence.

22. The fifth Accused filed the following voir dire grounds;

1. The caution interview was not obtained voluntarily.
 - A. Threats of violence made against the accused by Police Officers, the names of whom the accused does not know.
 - B. Use of violence against the accused by Police Officers, the names of whom the accused does not know.
 - C. The accused was threatened with indefinite incarceration if no confession was made.

2. The caution interview was obtained by oppression.
 - A. The Police Officer taking the interview used harsh and/or forceful language and created an atmosphere of tyranny and fear in which the caution interview was put to the accused.
 - B. The Police Officer and other Officers used actual violence against the accused forcing and/or creating an environment, which forced him to confess to the allegation for fear of more violence.
 - C. The accused was assaulted before and during the caution interview. The accused was poked, prodded and slapped.

3. The caution interview was obtained by unfairness.

- A. The accused is illiterate and did not understand the nature of the caution and questions put to him. The accused was questioned in Hindi – and his answers written in English – when he only understands Hindustani fluently and has only bare knowledge of English.
- B. The accused's answers were interpreted from Hindi to English without an interpretation of the interview signed by the accused and the said interpretation was done at the sole discretion of Police Officers.
- C. The accused was then forced to sign the caution interview interpreted and written in the English language.
- D. The Police Officer interviewing the accused used confusing dates and times to obtain answers from the accused.

4. The caution interview was obtained in breach of the accused lawful rights.

A. In breach of the High Court Rules – Judges Rules – Part IV.

23. Further grounds of voir dire were filed by the Legal Aid on the 18 November 2016 on behalf of the Fifth Accused.

- i) That the 5th accused was verbally abused and threatened and also physically assaulted at the time of his arrest by the Arresting Officers and the strike back team officers present;
- ii) That the 5th accused was not explained the reasons of his arrest nor informed of his rights at the time of his arrest;
- iii) That the 5th accused was verbally abused and threatened and physically assaulted at the time of his transportation back to Lautoka Police Station by the arresting officers and the strike back team officers present;
- iv) That the 5th accused was treated unfairly and with force at the time of arrest and his personal belongings was taken off him at the time of arrest forcefully with no explanation;
- v) That he was verbally abused and threatened and physically assaulted to admit to the offending at the time of the arrest and as a result of being verbally abused and threatened and

physically assaulted the 5th accused subsequently admitted to the allegations involuntarily out of fear.

24. The Prosecution witness, Cpl Sailesh Kumar gave evidence that on 14 May 2014 he interviewed the Fifth Accused under caution. He said that he conducted the interview in English Language and Detective Sgt Tuitai was the witnessing officer. The witness also said that the Fifth Accused signed at the end of each page of the caution interview. The Fifth Accused had been given all his rights according to the witness. Cpl Sailesh Kumar said that the Fifth Accused did not request him to be taken to the hospital before, during or after the caution interview.
25. I have considered the evidence given by Detective Sgt 2061 Salen Kumar, Aselai Tuitai And Seruvi Caqusau. All the Prosecution witnesses denied that the Fifth Accused was assaulted whilst in Police custody. Further they said that the Fifth Accused did not make any request for him to be taken to the hospital. The Fifth Accused had been arrested on 14 May 2014.
26. On behalf of the Fifth Accused Dr. Rigamoto Taito was called to produce a medical report. The witness said that the medical report was prepared by one Dr. Rogelio Alvato and that medical officer is no longer serving in Fiji. Therefore Dr. Taito submitted the medical report of the Fifth Accused and she said that the Fifth Accused is referred for medical examination on 16 May 2015 and the medical examination is done on 23 May 2015. Therefore, it appears that the Police medical examination form is issued for the Fifth Accused two days after his arrest although he was examined on 23 May 2015. Further Dr Taito confirmed that the Fifth Accused had received injuries as per the medical report.
27. I have considered the evidence given by the Accused and his wife as well. Although the Prosecution witnesses said that the Accused did not make any request for him to be taken to the hospital it appears that just two days after his

arrest he had been referred for medical examination. Therefore, the Prosecution could not rule out that the Fifth Accused had not received any injuries. In view of the allegations brought up by the Fifth Accused and his wife about assault by the Police officers I am not satisfied that the statements were made by the Fifth Accused voluntarily. The prosecution could not prove beyond reasonable doubt that the statements were given voluntarily and without any use of unfair practices.

28. Therefore, I decide that the caution interview and the charge statement of the Fifth Accused are not admissible in evidence.

29. For the forgoing reasons I make the following orders in respect of the First, Second and Fifth Accused persons;

- a. The caution interview statement and charge statement of the First Accused is admissible in evidence
- b. The caution interview and the charge statement of the Second Accused are admissible in evidence
- c. The caution interview and charge statements of the Fifth Accused are not admissible in evidence.



Rangajeeva Wimalasena
Acting Judge