

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 198 of 2019

[CRIMINAL JURISDICTION]

STATE

V

JONASA ROKOLEKAI

Counsel : Ms. U. Tamanikaiyaroi & Lal U. for the State
Ms. A. Singh for the Accused

Hearing on : 24 – 26 August 2020

Ruling on : 26 August 2020

VOIR DIRE RULING

[On the admissibility of the cautioned interview]

1. The above named accused (“accused”) is charged with another for one count of aggravated robbery.
2. The prosecution intends to rely on the admissions recorded in the cautioned interview statement of the accused. The accused assails the admissibility of the said interview.
3. The *voir dire* grounds filed on behalf of the accused are as follows;
 - a. *The Accused at the time of his arrest on 20 May 2019 by 7-8 i-taukei male police officers from his house at Wairua Settlement, Tamavua-i-wai was not informed of his rights of arrest;*

- b. *The Accused was assaulted at the time of his arrest by these i-taukei police officers. The Accused was punched by an i-taukei police officer;*
 - c. *The Accused was threatened by police officers in the police vehicle en route to Nabua Police Station. The Accused was threatened to tell the truth or he will see the "voso vakadua";*
 - d. *The Accused was forced into a room at Nabua Police Station and was punched on his ribs and kicked on his chest by 10 police officers, who were forcing him to admit to committing the offence*
4. A confession could be excluded or ruled inadmissible on two grounds; voluntariness and unfairness.
5. 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]
6. At the outset, it should be noted that the complaint that the accused was not informed of his rights when he was arrested is not relevant in deciding whether the admissions in the cautioned interview were made voluntarily.

7. Grounds two and four are based on physical assault by police officers at the time of arrest and then at Nabua Police Station before the accused was taken to Totogo Police Station for the cautioned interview.
8. The third ground alleges that the accused was threatened by police officers en route to Nabua Police Station from the place of arrest.
9. Accordingly, there are three questions to be answered in this case in order to reach the final conclusion as to whether or not the prosecution has established beyond reasonable that the admissions in the impugned cautioned interview were made by the accused voluntarily;
 - a) Was the accused assaulted during arrest and/ or at Nabua Police Station before him being taken to Totogo Police Station on 20/05/19? ;
 - b) Was the accused threatened by Police Officers while the accused was being transported after his arrest? ; and
 - c) Were the answers recorded in the cautioned interview given involuntarily by the accused either due to physical assault or verbal threats or both?
10. In this case, the prosecution called eight witnesses. The accused gave evidence.
11. The accused says that he was assaulted at the time of his arrested by the police officers who arrested him at Tamavua-i-wai on 20/05/19. He says that he was taken to Nabua Police Station after his arrest where he was assaulted again. During this trip to Nabua Police Station, he was assaulted and threatened that he will be assaulted if he does not admit to the allegation. Thereafter he was taken to Totogo Police Station where he was interviewed under caution. He said that he was assaulted at that Police Station as well. The interview was concluded on the following day.

12. The accused did not mention about any oppressive treatment while he was being interviewed. However, he says that the admissions recorded in his cautioned interview were made due to oppression and those answers were not given voluntarily.
13. According to the evidence led by the prosecution, the investigation into the alleged aggravated robbery was conducted by Totogo Police Station. However, certain officers from Nabua Police Station and Samabula Police Station have been called in for assistance. Among those police officers who gave evidence, PW1, PW2, PW3 and PW4 were officers attached to Nabua Police Station at the material time; PW5 and PW6 were from Samabula Police Station; and PW7 and PW8 were from Totogo Police Station.
14. PW7 was the Investigating Officer and also the Interviewing Officer and PW8 was the officer who had recorded the charge statement of the accused. Rest of the witnesses were members of the arresting team.
15. PW1, PW2, PW3, PW4, PW5 and PW6 denied the accused's claim that he was first taken to Nabua Police Station after arrest and they maintained that the accused was taken directly to Totogo Police Station. All police witnesses affirmed that the accused was not assaulted and not threatened at any point in time. However, there was a clear inconsistency with regard to the time of arrest and the time the accused was brought to Totogo Police Station after arrest.
16. Needless to say, given the allegation raised by the accused, that he was taken to Nabua Police Station and assaulted after he was arrested and before he was brought to Totogo Police Station, this inconsistency was a significant inconsistency in this case. This inconsistency was not explained. Moreover, the evidence of the arresting officers were not consistent with regard to the time it took to transport the accused from the place of arrest to Totogo Police Station. When some said it


was 15 minutes, PW4 said that it took one and a half hours. Whereas PW4 said that the said delay was due to traffic, PW2 said that the road was clear at that time.

17. In light of the aforementioned inconsistencies and the fact that the majority of the arresting team was attached to Nabua Police Station, there is a doubt in my mind as to whether the accused's claim that he was taken to Nabua Police Station and was assaulted before he was brought to Totogo Police Station, may be true. This doubt is further compounded by the entry No. 169 for 20/05/19 in the station diary of Totogo Police Station to the effect that accused was assaulted by the police and that he was taken to Nabua Police Station. Nevertheless, the evidence of the arresting officers was unreliable.
18. Thus, it was not difficult to conclude that the prosecution has failed to establish beyond reasonable doubt that the accused was not assaulted or threatened from the time of his arrest and until his interview commenced.
19. The next issue is whether the admissions recorded in the cautioned interview tendered as VDPE5 were made voluntarily by the accused. I have perused the said record of the cautioned interview. I note that the relevant rights have been properly explained to the accused. The accused does not dispute that fact anyway.
20. It is pertinent to note that when the allegation was put to the accused at question 5, the answer is "answer in court" and the accused had refused to sign acknowledging that he understood the said allegation. At least for about 14 questions his answer is "answer in court". I also note that the accused had denied stealing the property relevant to the allegation.
21. In my judgment, the answers recorded in VDPE5 do not portray as answers that were given as a result of being scared of threats or assaults whether or not the relevant allegations by the accused of threats and assaults by the police are true. I

note the evidence of the accused where he said in his examination-in-chief that it was not the first time for him to be questioned by the police.

22. All in all, I am satisfied beyond reasonable doubt that the accused had given the answers recorded in VDPE5 voluntarily. I rule that VDPE5 is admissible in evidence.




Vinsent S. Perera
JUDGE

Solicitors;

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