

**IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION**

Criminal Case No.: HAC 160 of 2018

THE STATE

V

- 1. LAISENIA SOKOMURI**
- 2. VISHAL SEN KUMAR DIN**
- 3. AJAY RAM**

Counsel : Ms. S. Naibe for the State.
: Ms. J. Singh for the First and Second Accused.
: Ms. K. Vulimainadave for the Third Accused.

Dates of Hearing : 24, 25, 26, February, and 01 March, 2021

Date of Submissions : 24 March, 2021

Date of Ruling : 25 March, 2021

VOIR DIRE RULING

BACKGROUND INFORMATION

1. The accused persons are charged with one count of aggravated burglary contrary to section 313 (1) (a) of the Crimes Act and theft contrary to section 291 (1) of the Crimes Act.
2. The prosecution wishes to adduce at trial the caution interviews of all the accused persons dated 24th August, 2018 and the charge statement of

the second accused dated 25th August, 2018. The accused persons object to the admissibility of all the caution interviews and the second accused also objects to the admissibility of his charge statement on the following grounds:

ACCUSED ONE

1. *The 1st accused was not given his rights at the time of his arrest;*
2. *That he was taken to Abaca and was physically assaulted and verbally threatened before taken for his caution interview;*
3. *The 1st accused was not given his rights during his caution interview;*
4. *That the accused does not remember the names of the Police Officers.*

ACCUSED TWO

1. *The 2nd accused was not informed of his rights during his arrest, and during the Caution Interview;*
2. *The 2nd accused was punched by one Police Officer namely Matthew [CID] and with others at the old Complex at Lautoka Police Station prior to being taken to Lautoka Police Station prior to his caution interview.*
3. *The 2nd accused was not given his rights to communicate with a family member , or lawyer before commencing his interview;*
4. *That he was yelled at and threatened during his interview;*
5. *The assaults inflicted on him were punches and he was kicked and verbally threatened prior to his interview and constantly being verbally threatened during his interview and charge statement;*

6. *That both accused persons were bullied used vulgar language and the interviewing officers raised their voices, resulting in the interview being conducted in a manner which was oppressive;*
7. *That they were given false promises, to admit to the offence, and hence both Accused persons with the situation exposed to accede to the demand of the Police Officers in the hope of being released from custody;*
8. *That neither their record of interview nor their charge statement was read back to them;*
9. *Furthermore both the accused persons was not even allowed to read his record of interview nor his charge statement.*

ACCUSED THREE

1. *The 3rd accused was not informed promptly, in a language that he understands, of –*
 - i) *The reason for the arrest or detention and the nature of any charge that may be brought against that person;*
 - ii) *The right to remain silent; and*
 - iii) *The consequences of not remaining silent;*
2. *The 3rd accused was denied his right to communicate with a legal practitioner of his choice in private in the place where he is detained, to be informed of that right promptly and, if he does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;*
3. *The 3rd accused was denied his right to communicate with, and be visited by his spouse;*
4. *The 3rd accused was denied his right to consult a Solicitor when arrested and after arrest;*

5. *The 3rd accused was systematically softened during the interview in that he was kept in custody in circumstances which was degrading and inhumane;*
6. *That the statements were obtained in circumstances that were oppressive;*
7. *The 3rd accused was subjected to “police brutality” before, during and after the caution interview.*
8. *The confessions of the 3rd Accused were obtained involuntarily since they have been obtained through pressure and duress by the Police officers during the entire duration of their interview.*
9. *The 3rd Accused persons was at all material times being treated as guilty to the offence whilst in Police custody and hit coerced pressure from the police made the 3rd accused persons subject to fright.*
10. *The police officers had subjected the 3rd accused persons to “flattery of hope” to be free to go home if they had admitted to the alleged offence.*

ADDITIONAL GROUNDS

1. *That on the day of this arrest, more than 8 police officers took him to the old Lautoka Police Station;*
 2. *That the police officers beat him with a police baton at the old Lautoka Police Station;*
 3. *That he was beaten with a police baton on his way to the new Lautoka Police Station;*
 4. *That 4 days after his arrest, the interviewing officer forced him to sign the record of his caution interview.*
3. The prosecution denies all the allegations raised by the accused persons. The burden is on the prosecution to prove beyond reasonable doubt that the caution interviews of all the accused persons and the charge

statement of the second accused was conducted fairly under just circumstances and the answers were given voluntarily without any assault by persons in authority namely police officers, lack of prejudice, lack of oppression and in compliance with the Fijian Constitution where applicable. In this ruling the above principles of law has been kept in mind throughout.

LAW

4. The Court of Appeal in *Ganga Ram and Shiu Charan vs. R, Criminal Appeal No. AAU 46 of 1983* outlined the following two tier test for the exclusion of confessions at page 8 in the following words:

“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 or prejudice or inducement by offer of some advantage which has been picturesquely described as “the flattery of hope or the tranny 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 Judge’s Rules falling short of overbearing the 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 categorize the matters which might be taken into account.”

5. The Constitution of the Republic of Fiji at sections 13 and 14 have recognized and endorsed the above mentioned principles as well.
6. It is for this court to decide firstly, whether the caution interviews of all the accused persons and the charge statement of the second accused

was conducted freely and fairly without any threats, assault, inducements or any improper practices by the persons in authority namely police officers who were involved in the investigation and that all the accused persons had voluntarily given their answers in these documents on their freewill.

7. Secondly, if there has been oppression or unfairness then this court can in its discretion exclude the caution interviews and the second accused charge statement. Furthermore, if the accused persons common law rights have been breached then that will lead to the exclusion of the confessions obtained, unless the prosecution can show that the accused was not prejudiced as a result of that breach.

EVIDENCE

PROSECUTION CASE

8. The prosecution called fourteen (14) witnesses to prove beyond reasonable doubt that the admissions obtained by the police officers during the investigation was given by all the accused persons voluntarily without any duress, assault, torture, inducement or any breaches of the accused Constitutional or common law rights.
9. The first witness PC 5263 Savenaca Rokoraura informed the court that on 24th August, 2018 at about 6.30pm the witness received instructions to conduct a raid at the house of a suspect involved in a burglary at the Valuefone shop, Lautoka.
10. Two teams were detailed and deployed to arrest the first accused Laisenia Sokomuri. Upon arrival at the house of the first accused the witness called out the name of the accused who opened the door. The witness approached the accused and informed him about the reason why

he was there. Upon hearing this, the accused informed the witness that he was involved in the burglary at Valuefone with three others. At this time the witness arrested the accused.

11. The witness cautioned the accused by giving him his right to remain silent, the accused told the witness that the safe they had stolen had been dumped somewhere in Abaca. The witness personally knows the accused so the conversation between the two was good and the accused was cooperative. The witness was talking to the accused inside the house with Constable Maciu Temo beside the witness.
12. The accused was not assaulted or threatened by anyone before his admission. From the house of the accused the witness and the other police officers with the accused went to Abaca. In the vehicle no one assaulted or threatened the accused, at Abaca the accused showed the witness and the other police officers where the safe was thrown. According to the witness the safe was about 100 to 200 meters down a steep slope. Once the safe was located the crime scene officers were informed.
13. At Abaca no one assaulted or threatened the accused after the arrival of the crime scene officers the safe was carried up the hill. Thereafter the accused was taken to the Lautoka Police Station, on the way to the police station no one assaulted or threatened the accused. At around 9am the witness arrived at the police station where the accused was handed over to the charge room.
14. The accused did not make any complaints to the witness about any assault or threats by any of the police officers and the witness did not see any injuries on the accused.

15. Finally, the witness stated that upon informing the accused the reason of his arrest the accused voluntarily admitted about his involvement in the burglary.
16. In cross examination the witness agreed that eight police officers had gone to arrest the accused and then went to Abaca. The witness also stated that upon explaining to the accused why he was at his house, the accused confessed.
17. The witness agreed that the accused was standing on the hill top guiding the police officers where the safe was thrown, however, the witness would not know if the accused had been assaulted or threatened by the other police officers at the hill top.
18. The witness read serial no. 61 of the station diary dated 24th August, 2018:

“09.50 hours crime Intel officers, PC Save brought in under arrest one Laisenia Sokomuri.”
19. The witness maintained that for 50 minutes from around 9am to 9.50am as noted in the station diary the first accused was with him. According to the witness there was no need to assault or threaten the accused since he knew the accused had voluntarily admitted who all were involved in the burglary.
20. The witness further stated that the accused was cooperative and assisting in showing where the safe was thrown. He had told the accused about the reason why he was at the house of the first accused.

21. When further questioned that the witness did not tell the accused that whatever the accused says can be used against him the witness said:

“I did not inform him, when he informed us about who all was involved I did inform him that everything will be taken down in writing at the station.”

22. The second witness PC 6806 Maciu Temo informed the court that on 24th August, 2018 he was instructed to conduct a raid at the house of the first accused.
23. There were two vehicles the witness was in Fleet 306 driven by PC Aliposo, with PC Josaia and PC Semisi that went to Kermode Road. Upon arriving PC Savenaca called the first accused since they are known to each other.
24. PC Savenaca informed the accused about the burglary at Valuefone shop, cautioned him and then informed him that he was being arrested. At this time the witness was beside PC Savenaca, the accused said that he was part of the robbery and he also informed them of the location where they had thrown the safe at Abaca.
25. According to the witness no one assaulted or threatened the accused. Upon receiving this information the team went to Abaca, the witness was with the accused in Fleet 10 driven by Cpl. Tobia, with Sgt. Aliko and PC Savenaca. The witness stated that the accused was not assaulted or threatened on the way to Abaca.
26. When the team arrived at Abaca the accused told the police officers where they had thrown the safe and opened it. The accused was

standing where the vehicle was parked and then showed the direction down the hill where the safe was thrown.

27. Before the safe was brought to the hill top the Crime Scene Unit officers were called to take photos and fingerprints. No one assaulted or threatened the accused at Abaca after this, the safe was taken to Lautoka Police Station together with the accused. At the police station PC Savenaca handed the accused to the charge room personnel. No one assaulted or threatened the accused when he was taken from Abaca to the Lautoka Police Station.
28. The witness maintained that the accused was given all his rights at the time of arrest and the accused was not assaulted or threatened by anyone. The witness also did not see any visible injuries on the accused.
29. In cross examination the witness stated that there were 5 police officers including him in one fleet, for the other fleet the witness could not recall the number of police officers that were in that fleet.
30. The witness stated that PC Savenaca had given the Miranda warning to the accused in the following words:

“You have the right to remain silent anything you say or do may be used against you in the court of law, you have a right to an attorney if you cannot afford one, one can be provided to you at the Government expenses.”
31. The witness stated that PC Savenaca had cautioned the accused and that he was not lying in court.

32. The third witness PC 4361 Laisenia Seru informed the court that on 23rd August, 2018 the Crime Intel team had received information that a suspect in the Valuefone burglary namely Vishal was seen driving a vehicle IY 469 in the Tavakubu area.
33. The witness was accompanied by Corporal Sailasa, Constable Timoci and Corporal Tobia, near the Total Service Station in Tavakubu the witness saw the car registration IY 469 driven by the second accused. The witness got out of the police vehicle and approached the accused at this time Constable Timoci was with the witness. The witness introduced himself and then explained the reason why the accused will be arrested at that point in time.
34. The witness also gave the accused his Constitutional rights and told him that he was not obliged and not forced to say anything, however, whatever he may say may be put down in writing and given in evidence in court.
35. By this time it was early morning about 10 minutes past midnight. Upon hearing this, the accused cooperated and stated that he was given his share in the sum \$1,000.00. At this time no one had assaulted or threatened the accused.
36. The accused mentioned that another person namely Ajay was residing in Ba who was also involved in the burglary. The same early morning the teams were regrouped, the witness and his team with second accused went to Raviravi, Ba. The other police team was able to arrest Ajay the third accused.
37. After 1am both teams returned to Lautoka Police Station and both the accused persons were handed over to the station orderly. No one

assaulted or threatened the second accused in the police vehicle or at Raviravi, Ba.

38. The witness maintained that he had given the second accused his Constitutional rights and the accused did not complain about anything and there were no injuries seen on the second accused.
39. In cross examination the witness stated that Constable Timoci was present when he gave the second accused his rights. He denied the suggestion that the second accused was taken to the old Lautoka Police Station and assaulted. The witness maintained that he had cautioned the accused and no one had assaulted or threatened the second accused.
40. The fourth witness PC 7265 Timoci Narova informed the court that on 23rd August, 2018 he was instructed to arrest the second accused he was with his team of Cpl. Tobia, Cpl. Sailasa and PC Laisenia. The vehicle driven by the second accused was intercepted at the Total Service Station, Tavakubu. The witness and PC Laisenia got off the police vehicle and went towards the second accused who was sitting in the car.
41. PC Laisenia informed the accused the reason why his vehicle was stopped, the reasons for the arrest and his rights were given by PC Laisenia and then the second accused was escorted to the Lautoka Police Station. The witness was beside the vehicle when PC Laisenia had approached the second accused.
42. No one assaulted or threatened the accused, when the accused was brought to the waiting police vehicle the accused admitted he was part of the team that had burgled the Valuefone shop. The admission by the accused was given without any force the accused also told the name of the other two accused persons and also agreed to show the house of the

third accused Ajay. No one assaulted or threatened the accused in the vehicle to Ba and then back to Lautoka Police Station.

43. The other team arrested the third accused and then all returned to Lautoka Police Station. At the Lautoka Police Station the second and the third accused persons were handed to the charge room officers. The second accused did not make any complaints and he did not see any physical marks on the second accused.

44. In cross examination the witness stated that the second accused was cautioned. The witness was referred to his police statement dated 24th August, 2018 second paragraph, line 4:

“We identified ourselves to the said Vishal Sen Kumar Din. PC Laisenia arrested him and explained to him the reason for the arrest and also about his rights. We then escorted him to Lautoka Police Station and during this time he admitted to us”.

45. The witness agreed that in his police statement he had stated that after the second accused was arrested he was taken to the Lautoka Police Station and he had not mentioned anything about the second accused been taken to Ba.

46. The witness denied the suggestion that after the second accused was arrested at Tavakubu he was taken to the old Lautoka Police Station and assaulted by police officers in the presence of the witness. The witness also denied that the accused was punched and kicked by around 10 police officers at the old Lautoka Police Station.

47. The fifth witness Josaia informed the court, on 24th August, 2018 he was instructed to go to Ba and to arrest the third accused Ajay Ram. The

witness was in fleet 306 with Aliposo who was the driver, PC Pauliasi and following them was fleet 10 with Corporal Tobia and others.

48. At Raviravi the witness and PC Pauliasi went to the house of the third accused since it was midnight everyone was sleeping. The witness knocked on the door and asked Ajay's father if he could speak with Ajay. When the third accused came the witness told the accused that he was a suspect in a burglary case in Lautoka, the accused was cautioned with Miranda warning.
49. The accused cooperated and changed his clothes the witness gave the accused his rights and from there they all went to the waiting vehicle and then to Lautoka Police Station.
50. According to the witness when he told the accused he was a suspect in a burglary case Ajay looked confused but cooperated, the witness did not assault or threaten the accused. The family of the accused had woken up and they wanted to know what had happened.
51. On the way to the Lautoka Police Station no one assaulted or threatened the accused. Upon arrival at the police station PC Pauliasi handed over the accused. The accused did not make any complaints and the witness did not see any injuries on the third accused.
52. In cross examination the witness stated that he was the one who was talking to the accused. He denied the accused was taken to the old police station where some officers were drinking grog and in the bure the witness and the other police officers had beaten the accused.
53. The witness also denied that the accused was handcuffed when he was beaten with the police baton. The witness also denied that he and the

other police officers had tied the leg of the accused with a rope and continued to beat the accused with the police baton.

54. The sixth witness constable 6818 Pauliasi Boseiwaqa informed the court that on 23rd August, 2018 at around midnight information was received on names of individuals who had taken part in the burglary at Valuefone shop so the witness led by DC Tobia proceeded to Ba as part of the arresting team to arrest Ajay Ram.
55. The witness went in a police vehicle fleet 306 with two other officers namely Constable Josaia and Constable Aliposo who was the driver. At the house of the third accused Constable Josaia arrested the accused after he was explained the reasons of his arrest and also Constable Josaia gave the Miranda warning. No one assaulted or threatened the third accused during his arrest. The accused was cooperative and the third accused was escorted to the Lautoka Police Station.
56. The witness denied that there were more than 8 police officers who had gone to arrest the third accused. The accused was not assaulted on the way to the Lautoka Police Station and he had escorted the accused to the charge room.
57. In cross examination the witness agreed that the accused was handcuffed after arrest by PC Josaia. There was no stopover at the old Lautoka Police Station, he denied at the old Lautoka Police Station the witness with the other police officers had tied a rope around the legs of the accused and made him to lie down while the accused was in handcuffs and assaulted him.
58. The witness maintained that he and the other police officers did not beat the accused with the police baton on his right ear and his body. The

witness also denied that the accused was assaulted from the old police station to the new police station with a police baton.

59. The seventh witness PC 2979 Isikeli informed the court that on 24th August 2018 he was instructed to caution interview the first accused. The witnessing officer was Detective Inspector Simione the interview was conducted in the ITaukei language and the witness had done the translation to the English Language.
60. The caution interview of the first accused dated 24th August, 2018 was marked and tendered as prosecution exhibit no. 1A and the English translation was marked and tendered as prosecution exhibit no 1B.
61. According to the witness he had cautioned the accused at Q.7 of the caution interview which was understood by the accused at Q.8 including all his rights.
62. The witness knows the accused who was normal and did not make any complaints, there was no promise or inducement or assault or threat made to the accused by either the witness or the interviewing officer before or during the interview.
63. As per the observations of the witness the accused was normal who was laughing during the interview inside the crime office. The witness respected the accused and explained to him that this was part of the investigation and he had to question the accused regarding the allegations.
64. In cross examination the witness stated that he had only cautioned the accused once at the commencement of the interview and thereafter when the interview recommenced after the breaks the accused was not

cautioned. When the witness was asked to explain why he did not remind the accused of the caution the witness stated *“it is by practice an accused is only cautioned once during the cause of the interview, it doesn’t mean that he comes from the break he has to be cautioned again.”*

65. The witness denied yelling, threatening, or using vulgar language or raising his voice during the caution interview. The witness also denied making any promise to the accused that he will be released if he admits to the allegations, the witness also stated that the accused had read the caution interview.
66. The eighth witness Det. Insp. Simione Ravouvou informed the court that on 24th August, 2018 he was the witnessing officer when the first accused was interviewed by Constable Isikeli. Before or during or after the interview commenced the accused did not complain about any assault or threat. The witness had also not seen any visible injuries on the accused.
67. According to the witness the accused was cautioned and given his rights during the interview. The interview was conducted for over 2 days. There was no inducement or promise made to the accused during the interview and he was also not assaulted. The accused was normal and cooperative and he gave his answers voluntarily. The accused was not physically assaulted or threatened he was also given all his rights during the caution interview.
68. In cross examination the witness agreed that a suspect is cautioned after a break before further questions are asked, the witness also said a suspect is reminded of his rights after breaks. The witness denied that he and Isikeli had used vulgar language, raised their voice or made any false

promise that if the accused admits the offences he will be released from police custody. The accused had read his interview before signing.

69. The ninth witness Det. Cpl. 4943 Netawa Yalayala informed the court that on 24th August, 2018 he had received instructions to caution interview the second accused. The interview was conducted at the crime office of the Lautoka Police Station the witnessing officer was Inspector Mahesh. The interview was conducted in the English Language which was printed and signed by the accused, the interviewing and the witnessing officers.
70. The caution interview of the second accused dated 24th August, 2018 was marked and tendered as prosecution exhibit no. 2. The accused was given his rights and cautioned which the accused had understood. The accused did not make any complaints about being assaulted or threatened, he was normal and cooperative during the interview. The accused had given his answers voluntarily and also read the interview. The witness denied the accused was bullied, sworn at, given false promises to admit the offences or continuously threatened.
71. In cross examination the witness stated that the accused was kept at the charge room awaiting interview, at 9.14am the accused was released from the cell block and then escorted to the Lautoka Police Station. There is a delay of 46 minutes from the time the accused was brought from the police cell to the police station so that the accused could get settled and for the witness to set up the interview room.
72. The witness denied he had bullied, used vulgar language and raised his voice during the commencement and throughout the interview. The witness also maintained that the accused was given time to read his caution interview after it was printed.

73. The tenth witness was retired Inspector Mahesh Chand who informed the court that on 24th August, 2018 he was the witnessing officer for the second accused who was interviewed by Cpl. Netava. After the interview was conducted it was printed and given to the accused to read and then to sign. The accused was given his rights and cautioned during the interview, the accused did not complain of any assault or threat by any of the police officers. The witness and the interviewing officer did not at any time assault or threaten or use vulgar language or raise his voice during the interview.
74. According to the witness there was no inducement or promise or intimidation made to the accused to give his statement. The witness did not see any visible injuries on the accused. He was normal and cooperative and was treated well and gave all his answers voluntarily.
75. In cross examination the witness maintained that the accused was not ill-treated, the interviewing officer did not use any vulgar language or had raised his voice. The interview was read to the accused and he was also continuously reading because the accused was sitting where he could see the laptop screen. The witness stated that there was no reason for him to lie in court.
76. The eleventh witness Det. Sgt. 4933 Koli informed the court that on 24th August, 2018 he was instructed to interview the third accused. The interview was conducted on a computer in a question and answer format with DC Bimlesh Naicker as the witnessing officer. The interview was conducted in the English language which was marked and tendered as prosecution exhibit no. 3.

77. According to the witness the accused was cautioned after the allegations were put to him which was acknowledged and understood by the accused. The accused had signed all the pages of the interview after reading the interview, he was not assaulted or threatened or promised or induced to make a statement. At the end of the interview the accused did not make any complaints.
78. The witness stated that the accused was not forced to sign the interview, he was given all his rights was not assaulted or threatened or given any false hope. The witness also did not see any injuries on the accused.
79. In cross examination, the witness denied that the accused was in handcuffs during the interview or in pain or touching his right ear and was also not limping on his left leg. The witness maintained that he had given the accused all those rights that are noted in the caution interview. The witness agreed that the witnessing officer Bimlesh was present throughout the interview on both days including the reconstruction of the crime scene and the search of the accused house.
80. The witness denied that on 25th August, 2018 in his presence police officers had gone into an empty room at the Lautoka Police Station and had kicked and sworn at the accused. The witness did not make any false promises to the third accused and the caution interview was a true record of what had happened during the interview.
81. The twelfth witness, Det. Sgt. Bimlesh Naicker informed the court that on 24th August, 2018 he was instructed to be the witnessing officer during the caution interview of the third accused. The interview was conducted at the crime office of the Lautoka Police Station. The interview was conducted via computer which was printed and handed over to the accused to read. After reading, the accused handed the document back

and was shown where to sign. The accused signed the caution interview voluntarily.

82. According to the witness the accused was given all his rights during the interview and was caution interviewed which the accused understood. The accused was not threatened or assaulted by anyone and also no one made any false promises to the accused to make any statement during the caution interview.
83. The accused gave his answers voluntarily the witness did not see any visible injuries on the accused.
84. In cross examination it was suggested to the witness that the station diary did not mention his name about his presence at the police station at the time of the caution interview, the witness responded by saying that he was the driver of the police vehicle and was present all the time. The witness also explained that he was the witnessing officer during the interview and everything was done by the interviewing officer. According to the witness he was there to witness that there was no force, or threat made to the accused during the interview.
85. The thirteenth witness Simone Yabia informed the court that on 25th August, 2018 he had formally charged the second accused in the English language with Sgt. Aliko Taria present as the witnessing officer. After the charge was completed it was printed out and signed by the witness, the accused and the witnessing officer. The charge statement of the second accused dated 25th August, 2018 was marked and tendered as prosecution exhibit no. 4.
86. The accused was given all his rights and cautioned during his charge which the accused understood. The accused was not assaulted or

threatened by anyone he gave his statement voluntarily. The accused was not intimidated or treated unfairly and no false promise was made to the accused.

87. In cross examination the witness agreed that he had stated when giving the accused his cautionary words, inter alia *“should you wish to do so, we won’t be able to know the side of your story.”* The witness disagreed that the nature of the caution compelled the accused to give incriminating answers.
88. The final witness PC 4433 Kusitino Vatu informed the court that on 23rd August, 2018 he started his night shift at the Lautoka Police Station from 11pm. As part of his duties he was also in charge of completing the cell book. In the cell book is written the personal details of the suspect in custody, any injuries on the suspect and so on.
89. The witness recalled receiving two suspects that night namely Vishal Din and Ajay Ram who were brought in by SC Pauliasi and SC Temo. The witness personally checked and searched them and then completed the cell book. When the witness searched both the suspects they were in good health.
90. According to the witness he did not see any injuries on both the suspects and he further stated that if there were any injuries the suspects would have informed him and then he would have issued a medical form for them to go to the hospital.
91. The witness stated that there is a column in the cell book which mentions *“fresh marks of violence”*. This column is completed if injuries are seen on the person brought into the police station, if there are no injuries then this portion of the cell book is left blank.

92. In cross examination by the counsel for the second accused the witness agreed apart from the two accused persons there were other suspects brought into the station that early morning and under the column "*fresh marks of violence*" he had written "*nil*". The witness maintained that there were no injuries seen by him on the second accused when he had searched this accused.
93. The witness was referred to his police statement dated 26th February, 2021, third paragraph line 1 which was read as follows:
"Whilst on duty one Vishal Din and Ajay Ram were brought in under arrest by SC Pauliasi and SC Temo I wish to say when they brought into custody there was visible injuries on them..."
94. The witness maintained there were no injuries on the second accused that is the reason why he did not write anything in the column "*fresh marks of violence*". The witness explained this column is completed if there are any injuries seen.
95. In cross examination by the counsel for the third accused the witness agreed that he had recorded his police statement and before signing he had read it. The witness also agreed that on the same night another suspect by the name of Venkat Vishal Naidu was brought in custody and for this suspect under the column "*fresh marks of violence*" he had written "*nil*". The witness agreed that his police statement dated 26th February, 2021 was true and correct.

96. In re-examination the witness stated that he had mentioned in his police statement that the two accused persons had injuries because he was too fast in writing his statement and was also rushing. According to the witness he was supposed to write "*there were no physical injuries on them*".
97. This was the prosecution case.

DEFENCE CASE

98. All the accused persons exercised their right to remain silent and did not call any witness.
99. After the hearing this court ordered all the counsel to file their written submissions which was filed.

ANALYSIS

100. The prosecution wishes to rely on the admissions obtained by the police officers during the caution interview of all the accused persons and the charge statement of the second accused at trial. On the other hand, all the accused persons are objecting to the admissions from being adduced as evidence at trial on the grounds that these admissions were obtained by the police officers as a result of assault on them, and in breach of their Constitutional right to remain silent and the consequences of not remaining silent.
101. There is no dispute that all the accused persons were caution interviewed at the Lautoka Police Station on 24th August, 2018 respectively and the second accused was charged on 25th August, 2018.

102. All the police officers who gave evidence told this court that all the accused persons were treated fairly and they had given their answers voluntarily. The accused persons were cooperative from the outset that is from the time of arrest and during the caution interview.
103. PC Savenaca and PC Isikeli knew the first accused and so there was a cordial exchange between them and the first accused and since the accused had cooperated there was no need to use any force or pressure as alleged.
104. In respect of the second and the third accused persons the other police officers also maintained that both these accused persons were not assaulted or threatened in any way even though they were taken from Lautoka to Raviravi, Ba and then brought back to Lautoka Police Station.
105. All the interviewing and the witnessing police officers including the charging police officer maintained in court that all the accused persons were treated well and given the reasons of their arrest and also properly cautioned in accordance with the Constitution of Fiji.
106. When the accused persons were caution interviewed and charged they were individually given their Constitutional rights and also cautioned in the language of their choice which they had acknowledged and understood.
107. The prosecution witnesses have denied any wrong doing, no one had assaulted or threatened the accused persons either during the arrest or caution interview. The questions in the caution interview and the charge were answered by the accused persons voluntarily on their own freewill. The accused persons had also not complained about the treatment they

had received and there were no injuries seen on them by any of the police officers.

108. The prosecution also says that the cell book was completed by PC Kusitino who had received the second and the third accused persons at the Lautoka Police Station. This police officer did not see any injuries on these two accused persons after he had searched them. The accused persons also did not mention anything about being assaulted by the police officers. Moreover, had this officer seen any injuries on the two accused persons he would have made a noting in the cell book and also taken both the accused persons to the hospital.
109. On the other hand, the accused persons through their counsel from the line of cross examination have stated that they were not properly cautioned that is in accordance with the Constitutional requirement either during their arrest or during the caution interview.
110. Furthermore, they also complain of the fact that they were threatened and assaulted by the police officers during interrogation which made them admit to the allegations. The accused persons are asking this court to rule out their caution interview and the charge statement of the second accused since the answers were not voluntarily given by them.

DETERMINATION

111. The first accused was arrested by PC Savenaca there are some doubts whether this officer had properly administered the caution to this accused at the time of arrest. In his evidence this officer had stated that he had approached the first accused inside his house and informed him about the reason why he was at the house of the accused. Upon hearing this, the accused informed the witness that he was involved in the

burglary at Valuefone with three others. At this time the witness arrested the accused.

112. In cross examination this witness agreed that eight police officers had gone to arrest the accused and then went to Abaca after the accused had admitted where the stolen safe was thrown. This officer had also told the court that upon explaining to the accused why he was at his house, the accused had confessed.

113. When further questioned that the witness did not tell the accused that whatever the accused says can be used against him the witness said:

“I did not inform him, when he informed us about who all was involved I did inform him that everything will be taken down in writing at the station.”

114. The evidence of PC Savenaca shows that the first accused was never cautioned before he confessed. It is the responsibility of the arresting officer to ensure that after he had told the accused the reasons of his arrest he or she should immediately caution the suspect by communicating the right to remain silent and the consequences of not remaining silent in a language the suspect understands.

115. Here after the accused had confessed then caution was given by the officer which is incorrect and ought not to be allowed. On this basis, I do not prefer the evidence of PC 6806 Maciu Temo who was with PC Savenaca as credible.

116. PC 2979 Isikeli had conducted the caution interview of the first accused this witness had stated that he had only cautioned the accused once at the commencement of the interview and thereafter when the interview

recommenced after the breaks or at the reconstruction of the crime scene the accused was not cautioned.

117. In my judgment it was incumbent upon the interviewing officer to remind the accused of the caution that was given to the accused at the commencement of the interview after every break before further questioning and before the crime scene reconstruction.
118. Section 13 of the Constitution of Fiji is specific about the rights of arrested and detained persons in this case particular emphasis is placed in respect of the first accused right to remain silent and the consequences of not remaining silent. This right accrues to a suspect which should not be fettered or interfered with by people in authority in this case the police officers who were carrying out the investigation.
119. The failure by the interviewing officer to remind the first accused of the caution after every break before any further questioning and before the reconstruction of the crime scene is fatal to the admissions given by the first accused.
120. The right of caution at the time of arrest and during the interview must be administered properly so that the suspect understands the caution and is able to make a considered decision whether to exercise that right or not.
121. The investigating officers are mandated under the law to administer the caution to a suspect promptly and correctly in a language which is understood by the suspect and any deviation from this procedure is fatal to the admissions obtained.

122. This court is not satisfied with the explanation given by the interviewing officer in respect of his failure to remind the accused about his caution after every break and at the crime scene reconstruction. When the mandatory provision of the law is not complied with by the people in authority they take the risk of getting the admissions obtained by him or her after or at the time of arrest or during the interview to be disregarded by the court.
123. In this regard I prefer the evidence of Det. Insp. Simione Ravouvou that a suspect is to be cautioned after every break before any further questions are asked or is to be reminded of same.
124. In respect of the allegation of assault raised by the accused persons this court prefers the evidence of PC 4433 Kusitino Vatu to the extent that at the material time the second and the third accused persons were brought into the Lautoka Police Station PC Kusitino was in charge of completing the cell book.
125. This officer had personally checked and searched the second and the third accused and then completed the cell book. This court also accepts that this witness had also completed the cell book of other suspects brought into the station that early morning and under the column "*fresh marks of violence*" he had written "*nil*" when he did not see any injuries but for reasons known to this officer he did not write anything for the two accused persons under this column.
126. Moreover, this officer had written his police statement dated 26th February, 2021, and I accept that he wrote the truth about his observations of the two accused persons that there were injuries on both the accused persons.

127. The officer agreed that he had recorded his police statement and before signing he had read it and the content of his police statement dated 26th February, 2021 was true and correct. On this basis, I do not give any weight to the evidence of this witness that he had not seen any injuries on the second and the third accused persons that early morning and therefore he did not write anything in the cell book under the column *“fresh marks of violence.”*

128. In respect of the charge statement of the second accused I do not accept that the charging officer Simone Yabia had properly administered the caution to the accused after the rights were given to the accused at Q. 4 of the charge statement inter alia:

“You also have the rights to remain silent, however, should you choose to do so we won’t be able to know the side of your story and the consequences of not remaining silent is that what you say will be given to court as an evidence.”

129. After the second count was read to the accused the following caution was administered:

“Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down into writing and may be given as evidence.”

130. I accept that the charging officer had not properly administered the first caution, however, on the second occasion the officer did caution the accused about his right to remain silent and the consequences of not remaining silent. After being cautioned the second time the accused had confessed does not in my view taint the admissions for lack of proper caution.

131. However, the reason why this court does not accept that the admission contained in the charge statement was given voluntarily by the accused is due to the fact that this accused was assaulted by the police officers before this admission was obtained by the charging officer. The assaults by the police officers during the arrest in my judgment had an impact on the second accused caution interview and charging.
132. This court rejects the assertion by PC Vatu that he had made a mistake whilst writing his police statement. As an experienced police officer he knew what he was doing when he was writing his police statement and then reading it before handing it over to the state counsel to be served to the defence.
133. I would also like to add that the demeanour of this officer during cross examination was not consistent with his honesty he was evasive and/or not deliberately answering some questions fully and completely.

CONCLUSION

134. Upon considering the evidence adduced by the prosecution and the line of defence put forward by all the accused persons, it is quite obvious to me that the first accused was not cautioned at the time of his arrest and also during his caution interview after all the breaks before further questioning and at the crime scene reconstruction.
135. I also accept that the second and third accused persons had been assaulted by the police officers when they were in their custody during interrogation. The police officer writing the cell book had seen the

injuries on both the accused persons but had deliberately not made any noting of these injuries in the cell book.

136. For these two accused persons nothing was noted under the column “*fresh marks of violence*” yet for another suspect brought in, this officer had written “nil” does indicate to me that this officer was not prepared to write the truth in the cell book.
137. My suspicion is confirmed by what this officer had mentioned in his police statement that he had seen some injuries on both the accused persons. When defence counsel questioned the officer whether his police statement was the truth the officer confirmed it was.
138. The evidence of majority of the prosecution witnesses is not plausible on the totality of the evidence before this court. In my judgment the prosecution witnesses were covering for each other and they gave a narration which is not reliable and credible.
139. Based on the above, this court is not satisfied beyond reasonable doubt that all the accused persons had given their caution interviews and the second accused his charge statement voluntarily.
140. In my view the lack of proper caution during the arrest and interview of the first accused and the assault by police officers on the second and the third accused persons had sapped the freewill of all the accused persons which led to the admissions in the caution interviews of all the accused persons and the charge statement of the second accused. This court does not prefer the evidence of the prosecution witnesses as reliable and credible in this regard.

141. In view of the above, I rule that the caution interview of all the accused persons dated 24th August, 2018 and the charge statement of the second accused dated 25th August, 2018 are not admissible in evidence.

Sunil Sharma
Judge

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.