

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL CASE NO. HAC 349 OF 2020

STATE

.v.

- 1. VILIIVO LAWA**
- 2. CAKACAKA COLATI**

Counsels:

Mr. Singh J.	-	For State
Ms. Dean A	-	For Accused 1
Ms. Singh M, Mr. Ali F	-	For Accused 2

VOIRE DIRE RULING

1. The **State** seeks to adduce into evidence in this matter the Cautioned Interview statement of the 1ST Accused **VILIIVO LAWA** recorded at the Lami Police station on 05/12/2020 and the Caution Interview statement of the 2nd Accused **CAKACAKA COLATI** recorded at the Lami Police Station on 05/12/2020.

Submission of the 1st Accused

2. The 1st Accused VILIVO MOSESE LAWA objects to the admissibility of his caution interview on the following grounds:-
 - a. That he was assaulted and slapped on the head and punched in the ribs when he was arrested;
 - b. That he was verbally pressured and threatened upon his arrest by 5 police officers, where he was blamed for stealing from Foods Pacific.
 - c. That he was forcefully told to walk from Lami town to the Lami Police Station.
 - d. He was taken to Lami Police Station, where he was further assaulted and threatened.
 - e. That during the interview the interviewing officer was threatening him and he was blamed for stealing despite him denying the allegations.
 - f. That during the interview there was no witnessing officer present.
 - g. That during the interview other police officers kept coming into the room and threatened him to confess.
 - h. That one of the police officers hit him with a pipe at the back of the head. He was forced to confess so that the case could be concluded. He was punched on both sides of the head.

Submission of the 2nd Accused.

3. During the initial part of the Voire Dire inquiry, since the 2nd Accused was absconding Court. Therefore, the counsel for the Legal Aid Commission couldn't cross-examine the Prosecution witnesses, due to not having instructions from her client. But for the record, counsel for the 2nd Accused objected to admitting the caution interview of her client in evidence.

Analysis and Finding of Court

4. In considering the 2 caution interview statements recorded in this matter from the two accused when in police custody, it is unfortunate to note that there are shortcomings in the process followed to record these statements, such as not having a witnessing officer. Therefore, this Court noticed deficiencies from the best practice requirements recommended by many local and other common law authorities.
5. The requirements needed to accept a confession made by an accused is now well settled in common law. In this regard, for a confession made by an accused to be admissible in evidence, firstly, the Prosecution should demonstrate that the confession was made voluntarily. That is the confession should not have been obtained through violence, fear or prejudice, threats and promises or by other improper inducements. This position was clearly pronounced in the **House of Lords** decision in the case *Ibrahim v R [1914]*¹. Secondly, as held in the **House of Lords** decision of *R v Sang [1980]*², the trial judge has the discretion to exclude the confession on a general ground of unfairness in recording the confession, if that is noticed by the trial Judge.
6. However, this Court is of the view that the infirmities noticed in the caution interview statements of the 1st and the 2nd Accused are not capable of invalidating those statements *per se* due to the noticed deviations from the best practice requirements. In addition, this Court did not notice any shortcomings in the recording of the caution interviews of the 1st and the 2nd Accused that would necessitate this Court to invalidate these two caution interview statements on the ground of violation of the voluntariness requirement or absence of fairness in line with the **House of Lords** pronouncements in the cases of *Ibrahim v R*³ and *R v Sang*⁴.
7. In relation to the 1st Accused, Prosecution witness **PC 5107 Benedito** gave evidence of conducting the caution interview of the Accused **VILIIVO LAWA**. He claimed that he conducted an interview with 1st Accused in question-and-answer manner on 05/12/2020 in English language, where himself and the 1st Accused signed on every page of the recorded interview on paper. According to him, at the interview only himself and the 1st Accused had been in the room, where he cautioned the Accused before and during the interview. During this, this witness had done a re-construction of the crime scene with the assistance of the 1st Accused at Food Pacific. In cross-examination, he affirmed that he did not assault the accused expecting answers and that

¹ [1914] AC 599

² [1980] AC 402

³ Supra, 1

⁴ Supra, 2

the accused did not make any complains about this interview. This witness marked the caution interview of the 1st Accused as **PEX2**.

8. In relation to the 2nd Accused, Prosecution witness **PC 5270 Ashmit Sharma** gave evidence of conducting the caution interview of the this Accused **CAKACAKA COLATI**. The interview had been conducted on 05/12/2020 at the Lami police station in English Language, where himself and the 2nd Accused had signed the recorded interview in paper. At the interview, there had only been himself, the 2nd Accused. He alluded that he cautioned the Accused before the interview and himself or any other officer didn't threaten or assault the accused. Further, this officer claimed that this accused didn't make any complains before, during or after the interview. During this interview, he had done a re-construction of the crime scene with the aid of the 2nd Accused. This caution interview was marked as **PEX3** and since the accused was not present in Court when this witness testified, this witness identified the 2nd Accused in the photograph on the accused identification form marked **PEX1**.
9. Therefore, in considering the above detailed evidence led at the Voire Dire inquiry and this Court not noticing any breaches of the required fundamental standards, this Court holds that it is safe to admit the caution interviews of the 1st and the 2nd Accused in evidence in this matter.



A handwritten signature in black ink, appearing to read "Thushara Kumarage".

Hon. Justice Dr. Thushara Kumarage

At Suva
This 26th day of October 2023

cc: Office of Director of Public Prosecutions
Office of Legal Aid Commission