

IN THE HIGH COURT OF FIJI
AT LAUTOKA SITTING IN BA
CRIMINAL JURISDICTION

CRIMINAL CASE HAC NO: 92 of 2021

BETWEEN: STATE

PROSECUTION

AND: VILISANI BULI

ACCUSED


Appearances: Ms S Naibe (ODPP) for the State
Ms L Naikawakawavesi (LAC) for the Accused

RULING VOIR DIRE

1. The accused was charged for the offence of Manslaughter contrary to section 239 of the Crimes Act 2009.
2. The prosecution claims that the accused confessed during his caution interview and formal charge statement. The prosecution sought to use the accused person's caution interview and charge statement as prosecution evidence.
3. The accused opposed to his caution interview and formal charge statement being admitted as evidence. His primary grounds for opposition are as follows:
 - i. Three itaukei police officers whose names are unknown to him had during the breaks when his record of interview was taken harassed him. They did this by forcing him to admit to the allegations and telling him to say that he punched the victim Moti Ram on the chest and that led to his death. The same officers forced him in the same manner to make admissions as recorded in his charge statement. These actions were witnessed by the interviewing officer.

- ii. He was not given an opportunity to seek legal advice from a lawyer of his choice or legal aid even though he had requested.
4. During the trial within trial, prosecution called three police officers to testify. The police officers were alleged to have made contact with the accused while he was in custody for the interview and formal charge. The mentioned police officers include:
 - PW1 – W/Cpl Meredani Naba (officer conducting caution interview)
 - PW2 – W/Inspector Ana Nai (witnessing officer to caution interview)
 - PW3 – D/Cpl Sarmesh (charging officer for formal charge)
5. The accused exercised his right to remain silent and didn't call any defence witness for the voir dire. Nothing adverse will be derived from the stance taken by accused to remain silent as of right. It is trite law that the onus lies on prosecution to prove beyond reasonable doubt that the accused caution interview and charge statement was obtained freely and without fear, force, threats or inducement at any time whilst in police custody. That he was also treated fairly whilst in police custody.
6. In the case of State v Rokotuiwai - ruling on voir dire [1996] FJHC 159; Hac0009r.95s (21 November 1996), the court referred to the case of Shiu Charan v R (F.C.A., Crim. App. 46/83) whereby it was stated that:

"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 - what has been picturesquely described as "the flattery of hope or the tyranny of fear." Ibrahim v R (1914) AC 599. DPP v Pin Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ c - E."
7. Bearing in mind the above principles on voluntariness of a confession, I now consider the evidence adduced at trial.

8. I will not recite the detailed evidence that is on record. I simply relate to the most important aspects of the same that are pertinent to the issue at hand.
9. All three police witnesses for the prosecution who testified and interacted with the accused during his time in police custody refuted any claims of assaults, threats and inducements, or any actions taken to coerce the accused into confessing. All three police officers affirmed that the accused provided his answers and statement of his own accord. The accused raised no complaints at all at any time, and all his rights were given, including the right to remain silent, the right to counsel, and the right to receive visits from a spouse, relative, or social worker. All police witnesses refuted any claims of observing any other police officer assaulting, threatening, or coercing the accused person during his time in police custody.
10. Accused as stated earlier had nothing to prove at any stage of the trial.
11. I have thoroughly evaluated all the testimonies provided by the prosecution witnesses concerning the matter before me. I accept and believe the testimony of the prosecution witnesses that the accused was not assaulted, threatened, intimidated, or coerced by  ~~law~~ police officers during his time in police custody. The accused has failed to establish any reasonable doubt regarding the prosecution's case. I find beyond reasonable doubt that accused provided his caution interview statement and charge statement willingly and without any force, threats or coercion from police officers. I'm also satisfied beyond reasonable doubt that accused was given his legal rights whilst being interviewed and charged.
12. Further, having considered the entire evidence, I find that accused person was not treated unfairly whilst in police custody. I'm satisfied that he was treated fairly whilst in police custody. He was given meals and rests and there is nothing to suggest otherwise.
13. In State v Sailasa Mociu HAC 052 of 2013S his Lordship Justice Temo (as then he was) at paragraph 6 quoted from the Court of Appeal decision in Sisa Kalisoqo v Reginam Criminal Appeal No. 52 of 1984 where their Lordships had stated "...we

have in recent times said that in giving a decision after trial within trial there are good reasons for the Judge to express himself with an economy of words..."

14. On the basis of foregoing discussion, I find that the caution interview and charge statement of accused person had been conducted and obtained voluntarily by police.
15. I therefore rule the caution interview and formal charge statement of accused person admissible as evidence.
16. I rule so accordingly.



Samuela D Qica
Judge

High Court – Sitting in Ba

15th October 2022