

IN THE FIJI COURT OF APPEAL

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. AAU0001 OF 1992
(High Court Criminal Case No. 1 of 1991)

BETWEEN:

KUAR SINGH

APPELLANT

-and-

THE STATE

RESPONDENT

Mr. J. R. Reddy for the Appellant
Mr. D. McNaughtan for the Respondent

Date and Place of Hearing : 14 May 1996 Suva
Date of Delivery of Judgment : 17 May 1996

JUDGMENT OF THE COURT

The appeal in this case is against conviction for murder. There were originally four grounds of the appeal. Two have been abandoned. The two remaining are:

"1. THAT the learned Trial Judge erred in law and on the facts in admitting all the alleged Confessional statements made by the Appellant to persons in authority and the subject matter of a trial within a trial in that:-

- (i) that said statements were involuntary at law
- (ii) were obtained by oppression
- (iii) were obtained by unfair methods
- (iv) were obtained by the use of violence and threats of violence
- (v) were obtained in breach of the Judges Rules.

4. THAT the learned Judge failed to adequately direct the assessors on the defence case as presented at the trial and in particular failed to adequately direct the assessors to treat the Appellants alleged confessions with care in view of the

circumstances in which they were made and the fact they were retracted."

At the hearing Mr. Reddy informed us that he would restrict his argument in respect of ground 4 to the second limb of it. He agreed also that, if the incriminating statements were properly admitted, then there was no question but that his client was rightly convicted of murder.

The prosecution case, as presented at the trial was that the appellant and the victim of the alleged murder, an elderly Fijian pastor and farmer, travelled together from Labasa to Lalakoro, which is some way from Seaqqa, that the journey was in three stages, by bus, in a van in which two police officers were also travelling and on foot respectively, and that the appellant struck the victim with a cane knife while they were walking near a cane field, robbed him of money and then buried him in the cane field. It was alleged that those events occurred on 2 November 1990, that members of the victim's church began to investigate what had happened to him and, having ascertained that the appellant had been with him on that day, took him to Labasa police station on 9 November 1990 as a potential witness. The prosecution case was further that on 9 November 1990 the appellant told the police that he had not travelled with a Fijian man on 2 November and that on 10 November 1990 some Fijians took the appellant to Seaqqa police station where, after being shown the victim's photograph, he admitted having travelled with the victim as alleged but said that three Fijian youths waylaid them, two took the victim away into a cane field where they assaulted

him and one restrained the appellant from going there and intervening. It was the prosecution's case also that the appellant took police officers to a cane field at Lalakoro, where the victim's body was found partly buried and that the appellant ran away and after being caught admitted to Sgt. Rupeni at the scene, after caution, that he killed the victim. Finally it was the prosecution's case that on the following morning the appellant was interviewed and cautioned at the police station by Sgt. Ramend and admitted killing the victim and that he was then formally charged and cautioned and confessed to the offence.

Ground 1 of the appeal is concerned with the admissibility of the evidence of the three statements in which the appellant allegedly admitted killing the victim. That is to say it relates to the ruling given by the learned Chief Justice, who was the trial judge, after a trial on the voire dire which lasted from 1 April 1992 to 14 April 1992. The issues raised by Mr. Reddy in respect of each statement are whether it was voluntary and whether His Lordship properly admitted it into evidence. The second remaining ground is concerned with the summing up by His Lordship to the assessors in respect of the three statements.

The questions whether or not a confession was made voluntarily and whether there was any breach of the Judges' Rules are essentially ones of fact, to be determined by the trial judge on the evidence presented on the voire dire (Director of Public Prosecutions v Ping Lin [1976] A.C. 574). There is then the further question whether the learned Chief Justice should have

exercised his discretion not to admit the confessions into evidence, on grounds of fairness.

As might be expected, His Lordship examined at some length the evidence given on the voire dire and gave reasons why he accepted certain evidence and rejected other evidence. He decided that all three statements were made voluntarily and that none of them was obtained in breach of any provision of the Judges' Rules. We have read carefully the record of the evidence and are satisfied that the findings of the primary facts, as distinct from the factual conclusions to be drawn from them, which we consider further below, made by His Lordship could properly be made on this evidence. They depended largely upon his assessment of the credibility of the evidence of the prosecution witnesses and of the appellant. We can find no error in the reasoning he applied in making those findings. Since his decision that the statements were made voluntarily and within the requirements of the Judges' Rules depended on those findings of fact, we consider that we should set them out in full.

They read:-

"It is not disputed that since 2nd November 1990 an Assemblies of God church pastor, the Reverend Kolinio Tuinaceva of Nasekula Village Labasa had gone missing in mysterious circumstances.

An official report of the missing person was made on the 6th November at the Labasa Police Station.

It is not clear from the evidence what the police practice or rule is for dealing with

reports of missing persons.

In any event it did not appear that the police at Labasa were overly active in investigating the disappearance of Kolinio Tuinaceva.

Indeed on the 9th November when accused was brought to Labasa Police Station for enquiries connected with the disappearance of the Rev. Tuinaceva the Labasa police did not see fit on the information they then had to pursue their enquiries on the whereabouts of Rev. Tuinaceva particularly in following up the lead that P.C. Naidu and P.C. Bimal had been with accused and Rev. Tuinaceva in a van at Seaqaga on 2nd November, 1990.

In any event accused was released from Labasa P.S. on the night of 9th November 1990 at 8.20 p.m.

On the 10th November the church members and other concerned people were restive and anxious following the release of the accused by the Labasa police on the previous night.

I accept that it was in this context that about mid-morning on Saturday, 10th November, 1990 P.C. Manasa of Seaqaga Police Station who himself was a member of the Assemblies of God Church was approached at Seaqaga by fellow church members from Labasa to assist them in their enquiries concerning the missing Rev. Tuinaceva.

P.C. Manasa who was off duty on that day agreed to assist them in their search for and enquiries about Rev. Tuinaceva and spent most of the morning doing so.

The enquiries he conducted took the form of contacting persons who were believed to have been seen with Rev. Tuinaceva on 2nd November 1990 when he was last seen by his wife and family and relatives and friends.

One such person was the accused. It was in these circumstances that at about 1.25 p.m. P.C. Manasa with P.C. Daniele driving police vehicle Fleet 27 left together with two Fijian civilians (Waisake Saukuru and Maikeli Dimuri) for Vunimako where accused was staying with his brother-in-law Anand Prasad.

On the way they met Ilaitia's van which had gone to fetch Kelevi Yaloqaga from Labasa. Kelevi got off from the van and boarded the police vehicle. Kelevi who was the last person who had seen the accused and Rev. Tuinaceva together on the 2nd November, 1990.

P.C. Manasa said his party then proceeded to Anand Prasad's house where he saw and spoke to the accused.

According to P.C. Manasa he requested accused if he could accompany them to Seagaqa Police Station for an interview. P.C. Manasa said he told accused he was one of the persons known according to information to have been last seen with Rev. Tuinaceva at Labasa on 2nd November 1990 and was wanted at Seagaqa Police Station as a witness.

According to P.C. Manasa accused agreed to go with him to Seagaqa P.S.

On the other hand, according to accused, P.C. Manasa told him "You accompany me to the station" to answer questions about the missing man and he told P.C. Manasa that he had already been questioned about the same matter.

I accept that while accused may have been very reluctant to go to the Station, he did agree to do so and went with P.C. Manasa in the police vehicle to Seagaqa Police Station. If find that no force or threats or any improper conduct were used on accused to go to the station at Seagaqa.

They arrived at Seagaqa P.S. at about 2.27 p.m.

There was some divergence in the evidence on what happened to accused when they arrived at the station.

According to P.C. Manasa accused was given an option whether to await for his interview in the charge room or at the open cell. Accused opted to wait in the open cell.

On the other hand, according to accused he was directed straight to the cell - when he went inside it was closed behind him but not locked and could be opened from outside.

On this conflict of evidence I prefer to accept that accused was told to wait in the open cell rather than alternatively in the charge room to await his turn to be interviewed. I prefer that version because in his depositions which was put to him P.C. Manasa did not mention the matter about the option. I recognise however that this may have been inadvertently omitted in his depositions which were not in fact written up until 20 February 1991 - over 2 months after the events to which he was deposing.

P.C. Manasa interviewed Kelevi Yaloqaga verbally first and then took a written statement from him after which he interviewed Tevita Misikoila who had arrived at the station later that afternoon.

P.C. Manasa then verbally interviewed accused - by this time it was 6.30 p.m. The interview lasted until about 7 p.m. during which accused stated that an old Fijian man was in the Savusavu bus at 9.30 a.m. on 2nd November 1990 when he was in the bus but he was travelling alone.

They both got off at Seaqaga P.S. and got into Dip's van in which P.C. Naidu and P.C. Bimal also travelled on some police enquiries.

Accused said he got off at Bureseini at the bus stop and went to play soccer before going to Lalakoro where he was staying. He said he had dinner and went to sleep at 9.30 p.m.

After that interview accused was asked to remain in the station and would be dropped off at his place after P.C. Manasa returned from his enquiries of some witnesses at Labasa.

Before P.C. Manasa left for Labasa he spoke on the phone to Sgt. Rupeni who was at Labasa at the time. He briefed Sgt. Rupeni of his interview with the accused.

P.C. Manasa left for Labasa in Ilaitia's van. Ilaitia, apparently a close relative or friend of Rev. Tuinaceva had been assisting in the search for the missing person.

P.C. Manasa returned from Labasa with Sgt.

Rupeni at about 10.55 p.m. He took Sgt. Rupeni to the open cell where accused was sleeping at the time and pointed accused out to Sgt. Rupeni.

Sgt. Rupeni then woke the accused and brought him to the charge room where he verbally interviewed him on his movements on 2nd November, 1990 in the Fijian language which accused understood fairly well.

According to Sgt. Rupeni he treated accused as a witness to the enquiry about the missing person.

Although accused first denied to Sgt. Rupeni any involvement with the missing person, subsequently after being shown a photo of Kolinio Tuinaceva he admitted being with the old man on the Savusavu bus when they came together to buy bullocks at Seaqaqa on 2nd November 1990.

Accused said they got off the bus at Seaqaqa and boarded Dip's van and that both of them got off at Bureseini and while they were on their way three Fijian youths came upon them and assaulted the old Fijian man and carried him into the canefield where he was dumped.

Accused told Sgt. Rupeni he tried to run away but they caught him and brought him back. They gave him \$200 and warned him not to say anything about it.

Accused also agreed, according to Sgt. Rupeni, to show the place where the three Fijian men dumped the old man in the canefield.

From the nature and circumstances of this verbal interview I have no doubt that the account accused gave Sgt. Rupeni was voluntarily made in the sense that it was not obtained under pressure or threats, or violence or force or improper conduct. The account could not have been otherwise than voluntary because it was aimed at shifting the blame for what happened to the old man away from the accused.

The account represented the first real breakthrough in the investigation concerning the fate of Rev. Tuinaceva.

A short time later after the verbal

interview P.C. Naidu who had been brought from his quarters for the purpose recorded a plain statement from accused which in several material particulars confirmed accused's earlier account to Sgt. Rupeni in the verbal interview.

The plain statement is not strictly a subject of this inquiry I must spend a little time on it because in his evidence accused made serious allegations against P.C. Naidu and P.C. Tubuka whom accused claimed was present when the plain statement was taken.

Accused claimed he was assaulted and verbally abused by these two officers when his plain statement was recorded.

I find the allegations made by accused as too far-fetched and nebulous for any credence to be given to them.

I reject his claim that P.C. Tubuke was present with P.C. Naidu when the plain statement was taken by P.C. Naidu.

I also reject the allegations of assaults and verbal abuses made against P.C. Naidu as totally untrue.

I have no doubt whatsoever that the plain statement was given voluntarily by accused. The statement was nothing more than an expanded version of accused's attempt to shift the blame away from himself for the death of Rev. Tuinaceva.

Following the agreement of accused to show the scene where the three Fijian youths attacked Rev. Tuinaceva, a police party including accused left Seaqqa P.S. to visit the scene.

Insp. Maafu had come from Labasa P.S. after Sgt. Rupeni had telephoned him and briefed Insp. Maafu on his verbal interview with accused in which accused had agreed to show the police the scene. Insp. Maafu was in the second of two vehicles that proceeded to the scene at about 2.30 a.m. in the early morning of Sunday, 11th November, 1990.

Accused was in the first vehicle with Sgt. Rupeni and P.C. Naidu who was driving.

On the direction of accused the police party proceeded towards Vunimako and came to Lalakoro Road where accused directed them to turn into a feeder road between grown up canefields. A little distance inside the feeder road accused told the police to stop where he and Sgt. Rupeni got off and so did Insp. Maafu from the other police vehicle.

At the scene after accused demonstrated a few yards in front of the first vehicle to Insp. Maafu and Sgt. Rupeni how the old Fijian man was attacked and pulled into the canefield and also showed the path taken into the canefield.

They followed this path and came to where a body was partially exposed on the ground.

There Sgt. Rupeni spoke in Fijian to Insp. Maafu who was standing close to him of his suspicions that it was the accused alone who must have killed the deceased.

Accused who was standing about two yards away and for reasons best known to him suddenly ran away from the scene through the grown up sugarcane and was chased by Insp. Maafu and Sgt. Rupeni. They were carrying torches that morning.

It was Insp. Maafu who found accused lying in hiding among the bushes. Insp. Maafu pulled him up and handed him to Sgt. Rupeni who led him away towards where the vehicles were parked on the feeder road.

There Sgt. Rupeni asked accused why he ran away from them. According to Sgt. Rupeni accused said he ran away because he could not stand and watch the old man.

In his evidence accused said he ran away because of what he heard Sgt. Rupeni said to Insp. Maafu at the scene.

Sgt. Rupeni said he asked the accused "who killed the old man" and in reply the accused said he himself killed the old man by hitting his head with a caneknife and not the three men whom he had earlier mentioned.

Thereupon according to Sgt. Rupeni he cautioned accused under Judges' Rule No. 2 and arrested him for killing Kolinio Tuinaceva.

Sgt. Rupeni then informed Insp. Maafu that he had arrested accused because of his confession to him.

On Insp. Maafu's instruction accused was escorted back to Seaqaga P.S. where he was body searched and locked up in the cell.

According to accused Sgt. Rupeni had said to him after he was recaptured from the bushes "You alone killed this man" to which answered "Yes". Accused said he was still under fear when he answered Sgt. Rupeni.

As to the divergence of evidence on this issue between Sgt. Rupeni and Accused, it appears to me that Sgt. Rupeni's account is to be preferred because it is far more credible in the circumstances and context of the situation in which the matter arose.

The accused had just revisited the scene where he had been several days before and also he had heard the suspicion cast on him by Sgt. Rupeni which caused him to run away from the scene in a desperate bid to get away from the police and no doubt to his great dismay he was caught and brought back.

In those circumstances the accused must have realised and accepted that the game was up and there was little point in denying his involvement in the death of the deceased. Hence the voluntary brief confession to Sgt. Rupeni.

Much was made by the defence of the purported breaches of the Judges' Rules when Sgt. Ramend interviewed accused under caution in accordance with Judges' Rule No. 2.

It was said that since Sgt. Rupeni had arrested accused for killing the deceased, it was highly improper to hold such an interview or any interview at all of the accused.

In my view the Judges' Rules are clear on the issue namely that as long as a person whether, in custody or not, has not been charged with an offence or informed that he may be prosecuted for it, it was proper for such a person to be asked questions about his possible involvement in an offence.

DPC(N) Indar Prasad the most senior and experienced police officer in the district had arrived at Seagaqa P.S. later in the early morning of 11th November, 1990 when he was fully briefed on the case including the events at the scene earlier on.

After the briefing DPC Indar Prasad took complete charge of what had then become in fact a murder investigation.

It was he who instructed accused to be interviewed under caution after assessing the whole circumstances of the case up to that stage.

No doubt his decision was taken because there were still quite a few matters that needed to be clarified so far as the police was concerned and before a formal charge could properly be laid.

Sgt. Ramend interviewed accused at 7.11 a.m. on 11th November, 1990 in the presence of P.C. Naidu.

Accused made no complaint against Sgt. Ramend about the interview but in regard to P.C. Naidu accused again alleged that he was assaulted and verbally abused by P.C. Naidu.

I find his allegation against P.C. Naidu in the context of the interview itself and how it was conducted by Sgt. Ramend the main interviewer, as completely untrue and untrustworthy. Accused simply could not be believed on those allegations which I wholly reject."

Of medical evidence of superficial injuries found on the appellant by a doctor His Lordship found as follows:-

"It is true that when accused was medically examined by Dr. Krishnan at Labasa Hospital he found on accused four bruises -

- (1) a small superficial bruise on front part of left shoulder which was not tender;
- (2) four parallel superficial bruises over

- the left side of the lower part of the neck and upper part of shoulder which were only slightly tender;
- (3) a small superficial abrasive bruise over the right shoulder blade just below the scapula spine which was also slightly tender; and
 - (4) a small horizontal bruise with abrasion over the roof at back of neck over the 5th cervical spine which was also only slightly tender.

Dr. Krishnan described the bruises as minor in nature - because the bruises were so minor and superficial and only slightly tender the accused had not noticed them at all on him.

I find and accept that those bruises could have been caused when accused took flight from the scene amidst grown sugar cane plants and the bushes.

In any event I am satisfied they could not have been caused by deliberate use of violence on the accused. In such a case the tell tale marks would have been quite different in nature and extent from those minor bruises.

I am satisfied that nothing of evidential significance turns on the minor superficial bruises found on accused by the doctor."

Mr. Reddy has submitted first that the confessions were obtained as the result of oppression of the appellant over a period of almost two days, so that they were not made voluntarily. He has submitted also that there was a substantial breach of the Judges' Rules when Sgt. Ramend interviewed the appellant on the morning of 11 November, which affected also the statement taken by Cpl Khan after the appellant was charged.

What constitutes oppression that prevents a confession being treated as having been made voluntarily was considered by Sachs

J. in R v Watson, tried on 7 December 1965. He referred to what he had said on the matter two weeks earlier in R v Priestley. What he said in Watson is reported under the title "Note to Martin Priestley" at 51 Cr. App. R. 1. So far as is relevant in these proceedings he said:-

".....in [Priestley] I mentioned that I had not been referred to any authority on the meaning of the word "oppression" as used in the preamble to the Judges' Rules, nor would I venture on such a definition, and far less try to compile a list of categories of oppression, but, to my mind, this word in the context of the principles under consideration imports something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary.... Whether or not there is oppression in an individual case depends upon many elements. I am not going into all of them. They include such things as the length of time of any individual period of questioning, the length of time intervening between periods of questioning, whether the accused person has been given proper refreshment or not, and the characteristics of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of this world may turn out not to be oppressive when one finds that the accused person is of a tough character and an experienced man of the world."

That statement has been adopted and followed by this Court in Ali Hassan and Others v R. (Criminal Appeal No. 57 of 1977: 28 July 1978) and in Rajesh Kamal Prasad and Another v. R. (Criminal Appeal No. 1 of 1978: 28 July 1978). We are satisfied that we should similarly adopt it and follow it in determining the present appeal.

We shall now consider separately the three statements made by the appellant and allegedly containing confessions. The first was made to Sgt. Rupeni at some time after 2.30 a.m. on the morning of 11 November 1990 near to where the victim's body had been found. Sgt. Rupeni questioned the appellant after he had run away and been brought back. It is clear that he suspected that the appellant had killed the victim but equally clear that there was no evidence that he had done so. The situation was, therefore, one to which Rule 1 of the Judges' Rules was applicable. He did not breach the Rules by asking the appellant why he had run away and who had killed the victim. Until the appellant admitted that he had killed the victim, no caution was required; Sgt. Rupeni gave it immediately after the admission was made and so complied with Rule 2.

The learned Chief Justice rejected the appellant's evidence that he had been assaulted by police officers earlier that night. We accept that His Lordship's reasoning in coming to that conclusion was sound. So far as concerns the issue of oppression, the appellant had been taken to Labasa police station in the afternoon on 9 November by members of the public who knew that he had been seen in Labasa on 2 November with the victim. He was treated by the police as a potential witness and, having said that he knew nothing about the victim, he was allowed to leave the police station at 8.20 p.m. and returned to his home. On the afternoon of 10 November a police constable took him to Seaqqa police station. The police constable was off duty and was in the company of members of the victim's church; they had

apparently told him that the appellant had been seen with the victim on 2 November. Again, on arrival at the police station the appellant was treated as a potential witness. The learned Chief Justice expressly found that, although the appellant might have been very reluctant to go to the police station, he agreed to do so and there was no force, threat or improper conduct. That finding was entirely consistent with the primary facts which he found.

At the police station the appellant was told to wait in the cell but the door was not locked and he could have opened it if he had wished. A police officer then interviewed some other witnesses before questioning the appellant at 6.30 p.m. He told the police officer that he had seen an old Fijian man on the bus on which he had travelled on 2 November but knew nothing more of the matter. The police officer told him that he should remain at the police station until he had time to drive him home. He then briefed Sgt. Rupeni, who interviewed the appellant at 10.55 p.m. and showed him a photograph of the victim. The appellant then admitted that he had been in the company of the victim on 2 November and made an exculpatory statement to Sgt. Rupeni. From the nature of the statement His Lordship found that it was made voluntarily, as was a similar plain statement to the same effect made shortly afterwards to P.C. Naidu. He found that the appellant having made those statements, agreed to show the police where the victim had been attacked by three Fijian youths.

The learned Chief Justice addressed in respect of all three statements together the issue of oppression allegedly brought about by what had been described by defence counsel as the involvement of vigilantes and by the long detention of the appellant at Seaqqa police station. He said that, in his view, the evidence before him did not support the allegation of oppression or general unfairness to the appellant, that it was very clear that his will had not been overborne in any way and that he had been provided "with the basic courtesies that would be expected in this situation as events quickly took their course".

In respect to the confession to Sgt. Rupeni we have no doubt that he was correct. His Lordship found that the members of the public who took the appellant to Labasa police station on 9 November and persuaded the off-duty police officer to take him to Seaqqa police station on 10 November were Fijian members of the victim's church. On 10 November, he found, they were "restive and anxious following the release of [the appellant] by the Labasa police on the previous night". It is clear from that that they suspected him of complicity in the victim's disappearance and it is likely that some of them at least would have been hostile towards him. No doubt the appellant would have felt that hostility. But at both police stations he was treated as a witness. He was not detained at Labasa police station on 9 November and was at Seaqqa police station on 10 November only from 2.27 p.m. He spent most of the time simply waiting his turn to be questioned as a potential witness. In our view nothing that occurred up to the time when he first confessed to Sgt. Rupeni

was such that His Lordship should have found that it constituted oppression.

We turn them to the second statement in which the appellant confessed to killing the victim, the statement made in the form of answers to questions addressed to him by Sgt. Ramend. The learned Chief Justice found that Sgt. Ramend interviewed the appellant in accordance with Rule 2 of the Judges' Rules. We are satisfied that the evidence supported that finding. However, Mr. Reddy has submitted that, by the time when the interview began, the stage had been reached where Rule 3 had become applicable and not Rule 2.

Rule 2 is applicable where " a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence". Rule 3 is applicable "where a person is charged with or informed that he may be prosecuted for an offence". The evidence established that it was not until after the interview had been concluded that the appellant was charged with murdering the victim. There was no evidence that he was informed before that he might be prosecuted for an offence.

However, sub-paragraph (d) of the introductory paragraph to the Judges' Rules provides:-

"(d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence."

His Lordship held that the stage had not been reached where Rule 3 became applicable; he referred to (R. v Collier and Stenning (1965) 49 Cr. App. R. 344). Mr. Reddy referred us to R v Hudson (1981) 72 Cr. App. R.72 where the Court of Appeal in England found that, on the facts of that case, the appellant should have been charged after he made certain admissions. However, he had been kept in custody for five days during which he was questioned at length about allegations of corruption, notwithstanding that he had been arrested for an entirely different offence. The failure to charge him earlier than he was charged was part of a course of oppressive conduct by the police officers.

The learned Chief Justice did not expressly refer to paragraph (d) of the introductory paragraph in his summing-up set out above. What he said was:-

"After the briefing DPC Indar Prasad took complete charge of what had then become in fact a murder investigation.

It was he who instructed accused to be interviewed under caution after assessing the whole circumstances of the case up to that stage.

No doubt his decision was taken because there were still quite a few matters that needed to be clarified so far as the police was concerned and before a formal charge could properly be laid."

Having ourselves considered the findings of fact made by His Lordship, we consider that he did not err in regarding it as proper that Sgt. Ramend interviewed the appellant in accordance

with Rule 2; but, even if he did and the appellant should have been charged before the time at which Sgt. Ramend interviewed him, we are satisfied that the resulting breach of the Judges' Rules did not cause any unfairness.

With regard to the question of oppression the learned Chief Justice said:

"I find that the accused gave his answers to Sgt. Ramend in the interview quite voluntarily, that is to say, of his own free will without any improper conduct being used upon him by either officer or anyone else for that matter."

He did not expressly advert to the events of 9 and 10 November or the length of time that the appellant had spent at the police station and in the company of the police. We are satisfied, however, from the findings of primary facts which he made in the passage from his ruling which is set out above, that events following the appellant's initial confession to Sgt. Rupeni were not such that, together with the events up to that stage, they constituted oppression. In our view, His Lordship correctly found that the answers given to Sgt. Ramend's questions were given voluntarily.

So far as the third statement is concerned in which the appellant confessed to the offence, it was made after he had been charged and cautioned. There is no doubt that Rule 3 of the Judges' Rules was applicable and was complied with by Cpl Khan. The learned Chief Justice did not expressly consider in respect

of that third statement whether it was made as the result of oppression. The assaults alleged by the appellant were said by him to have occurred before Sgt. Ramend's interview began. His Lordship found that they did not occur. His findings on the question of alleged oppression, apparently made in relation only to Sgt. Ramend's interview, were essentially applicable also to the statement made to Cpl Khan. For the reasons which we have given above His Lordship did not err on the question of oppression in relation to Sgt. Ramend's interview. We are satisfied that there were no grounds for him to have held that the statement to Cpl Khan was not made voluntarily because of oppression.

We accept the proposition that it was within the learned trial judge's discretion to reject the inculpatory statements if he considered that in all the circumstances it would be unfair to admit them (Naniseni v R [1971] NZLR 269 at 275). It is clear from the ruling which he gave that he was mindful of that proposition.

We find, therefore, that the learned Chief Justice did not err in finding that all three confessional statements of the appellant, to Sgt. Rupeni, Sgt. Ramend and Cpl Khan respectively, were admissible as evidence at the trial. Accordingly, so far as ground 1 of the appeal is concerned, the appeal cannot be upheld.

We turn, therefore, to the other remaining ground, which relates to the learned Chief Justice's summing-up to the

assessors. Mr. Reddy drew to our attention the following passages from the summing-up:-

"When referred to an alleged confession, the word "voluntary" means that the confession was made freely and willingly, that is to say, the confessions had not been obtained or induced from the accused under the pressure of threats or assaults or force.

The question of threats and assaults becomes important only if as a result of such threats and assaults they caused the accused to make a false or untrue confession.

In other words, any threats or assaults that may have occurred are only relevant in this case if they caused the accused to give a false or untrue confession.

You will recall gentlemen assessors, accused said he was assaulted by P.C. Naidu and P.C. Tubuka when his plain statement was taken at the charge room in the early morning of Sunday, 11th November.

In that statement accused said that three Fijian youths had attacked the old Fijian man. Accused did not make any confession - indeed that was not in his mind. What was in his mind was to blame three Fijian boys for the attack on the old man. So you may ask, what was the point for accused to say that he was assaulted when all the plain statement appeared to do was to shift the blame to other people for what happened to Rev. Kolinio."

and

"Accused alleged assault and use of abusive language by P.C. Naidu during the interview.

He made no complaint against Sgt. Ramend in the interview.

You may think it very odd, gentlemen assessors that complaint was made against P.C. Naidu for assaulting accused but none against Sgt. Ramend who was an officer superior to P.C. Naidu."

Mr. Reddy submitted that the reasoning in both those passages was defective.

The summing-up was lengthy; it occupies 28 pages in the appeal book. In it His Lordship made it very clear to the assessors that it was they who had to decide the facts including, so far as the alleged confessions were concerned, whether the appellant made them and, if so, whether they were true. He expressly told them that if he expressed, or appeared to express, an opinion as to any fact, they had to decide for themselves whether to accept that opinion or not. The giving of such a direction did not, of course, absolve His Lordship from his obligation to sum up fairly and not to influence the assessors improperly.

The first passage of which Mr. Reddy complained followed a lengthy recital of the events which had led to the appellant being questioned by P.C. Manasa and then by Sgt. Rupeni. While His Lordship concluded the final sentence of the passage in the form of a rhetorical question, we can find no fault in his suggesting to the assessors the particular line of reasoning.

So far as the second passage is concerned, we would agree with Mr. Reddy that there is nothing inherently unlikely in a junior officer assaulting a suspected offender in the presence of a more senior officer, if the more senior officer turns a blind eye to the assault. However, we are unable to conclude that that single passage contained a misdirection as such or was the

expression of an opinion such as would, in the context of the whole of the summing-up, have unduly influenced the assessors. The summing-up, traversed all the issues and the evidence relating to them and was full and adequate.

Accordingly we find that the appeal has not been made out so far as the second remaining ground is concerned. Having come to the same conclusion in respect of the first ground, we dismiss the appeal.

Moti Tikaram

.....
Sir Moti Tikaram
President Fiji Court of Appeal

I. R. Thompson

.....
Mr. Justice I. R. Thompson
Justice of Appeal

J. D. Dillon

.....
Mr. Justice J. D. Dillon
Justice of Appeal