IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FORM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0036 OF 1999S
(High Court Criminal Case No. HAC021/98 )

BETWEEN:

SUDESH JEET

*Appellant*

AND:

THE STATE

*Respondent*

Coram: The Rt. Hon. Sir Thomas Eichelbaum, Presiding Judge
The Rt. Hon. John Steele Henry, Justice of Appeal
The Hon. Sir Rodney Gallen, Justice of Appeal

Hearing: Wednesday, 10th October 2001, Suva

Counsel: Mr. A.K. Singh for the Appellant
Mr. J. Naigulevu for the Respondent

Date of Judgment: Thursday, 18 October, 2001

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## JUDGMENT OF THE COURT

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On 4 June 1999 following a trial in the High Court at Suva, the appellant was found guilty on one count of murder and one count of larceny. He now appeals those convictions.

The deceased, Roshni Lata, was living with her husband and two children at 46 Namena Road, Nabua. On 2nd June 1998 the husband had gone to work and the two children had gone to school. Upon returning home the sons found the dead body of their mother lying on the floor of one of the bedrooms. She was half-naked from waist downwards. The matter was reported to police. There were items stolen from the house of the deceased - two speakers, radio, computer with keyboard and a black waist bag.

The police upon making their enquiries were informed that a maroon coloured taxi with the letter "URO" written on both sides of the taxi was seen in the compound of the deceased that day. The owner of this taxi was Uday Sen. The owner had given this taxi registered No. E7153 to appellant to drive.

The doctor who carried out the post mortem examination had attended the scene of the homicide. He found that the cause of death was suffocation due to strangulation, effected by the strap of a sulu which had been tied around the deceased's neck. He had noted the ligature when first examining the body at the scene. The doctor also found the deceased had suffered a deep laceration to her face and bruising to the chin and the right breast.

The evidence disclosed that at about 3 pm on 2nd June the appellant, accompanied by one Shalen Kumar, went to the house of Irshard Ali in order to have repair work carried out on the taxi which the appellant had been driving. Following a discussion, two speakers, a computer and keyboard were left at Ali's house. They were later collected by the police and identified as having come from the deceased's home.

At trial Shalen Kumar gave evidence. He had been granted immunity and clearly was an accomplice and therefore the subject of an appropriate warning when the Judge summed up. Shalen said that the appellant had driven them both in the taxi to the deceased's home, saying that she was his girlfriend. The deceased invited them in, and

an argument between the deceased and the appellant ensued when the deceased refused to have sexual intercourse with him. Shalen then went outside. Looking through the window, he said he saw the appellant hold the deceased's neck and pushing her down. The appellant then came out of the house and told Shalen that he had "killed the woman" and did not know why he had done that. Items from the house were loaded in the taxi including a waist bag. He confirmed that some of these items were left at Ali's house. His evidence was strongly attacked in cross-examination, and its accuracy denied by the appellant when he gave evidence.

The other principal evidence against the appellant came from his second caution interview by the police, and his charge statement. The admissibility of those two statements, which were highly inculpatory, and an earlier statement was challenged at trial and the subject of a lengthy trial within a trial. The Judge ruled all statements admissible.

In this Court Mr Singh for the appellant propounded a number of grounds of appeal. As we have reached the conclusion that the Judge erred in admitting the statements in evidence and that a new trial must in the circumstances therefore be granted, it is unecessary to consider the other matters raised by counsel in any depth. Suffice it to say that having heard argument, we take the view that none of the other grounds has substance which would warrant setting aside the verdicts. We turn therefore to the issue of admissibility.

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The appellant, together with Uday Sen, had gone to the Nabua Police Station at 7:15 p.m. on 2nd June, the day of the homicide. He thought he may have been wanted by the police in respect of a traffic offence. The police ascertained that he had been to the deceased's house on that day. He was kept in the station overnight, sleeping in an office at the station. He was not placed in a cell. The next morning 3rd June he was taken to Valelevu Police Station, where he was interviewed over a period commencing at 10:45 a.m. This first interview concluded at 11:15 p.m.. It was resumed briefly for some ten minutes at 6 a.m. the following morning 4th June. The whole interview disclosed nothing inculpatory of any substance.

The appellant remained at the police station throughout 4th June. He was further interviewed, commencing at 5.05p.m. that day. There was a number of breaks during the interview which then followed, which concluded at 2:40 p.m. the next day, 5th June. He was charged at 2:45 p.m. and arrested formally at 3.05 p.m. This interview, as did the subsequent charge statement, contained highly inculpatory material.

In his ruling, the trial Judge rejected claims that the appellant had been assaulted by the police, that he had been under any form of duress or inducement, that the statements had been fabricated by the police, and that he had not signed the statements himself. The Judge also held that the statements had not been obtained unfairly or in oppressive circumstances.

We reject the submission that the Judge erred in finding the statements were voluntary and had not been extracted by violence, threats or other such improper conduct on the part of the police. He saw and heard the relevant witnesses, and his ruling discloses that he gave adequate consideration to the matters now raised by Mr Singh in that respect. Also, he was clearly entitled to reject the allegation of fabrication.

Although subsections (1) and (3) of s.27 of the Constitution were at the forefront of Mr Singh's submissions on this ground of appeal, his broad argument traversed the equally important aspect of overall fairness. It is on this aspect we respectfully disagree with the trial Judge. The chronology is important. The appellant had gone voluntarily to the police station at 7:15 p.m. on 2nd June. He was kept there overnight, and on the evidence the reality was that he was not free to go. The next day he was subjected to a lengthy interview, commencing at 10.45 a.m. It continued, with breaks, until 11:15 p.m. The interviewing process itself occupied some 3 hours 45 minutes, and ceased when the appellant understandably expressed the wish to rest. During the course of the day he was provided with lunch and he was visited by relatives. On one occasion he was taken from the police station for the purpose of assisting the police in their further enquiries arising from the interview. He was taken to the Nabua Police Station, arriving there at 5 p.m. and again questioned through until 10:25 p.m. He was kept in the police station overnight for a second night, and then again interviewed briefly at 6 a.m. on the morning of 4th June before the questioning ceased at 6:10 a.m. As earlier noted, nothing in the nature of a confession resulted from this interview. The evidence shows that the appellant would not

have been free to leave the police station or police custody throughout this period.

The appellant was then kept at the police station throughout 4th June. We can see no justification for this, even allowing for due balance between the rights of a suspected person and the exercise of powers of investigation. When the second caution interview commencing at 5:05 p.m. that day, the appellant had then been effectively in police custody for almost 46 hours, during which time he had been questioned extensively in respect of the murder. There was a break in this interview from 6:15 p.m. until 7:30 p.m. when he was supplied with food and clothing from his wife, and he was also provided with a bath and dinner. Subject to a toilet break, the interview then continued through to 11:55 p.m. The appellant spent his third night in police custody, sleeping on a mat in the CID office at the police station. The interview was continued on the morning of 5th June, commencing on 6:50 a.m. The appellant was given breakfast at 9:05 a.m. At 10:15 a.m. the interview resumed, and at 1:10 pm. he accompanied the police to the scene of the murder. The interview continued at 1:45 p.m. at the police station, and concluded at 1:55 p.m. The appellant did not complete reading the record of the interview until 2:40 pm.

This narrative gives cause for concern. The appellant was, as the Judge found, actually in custody throughout that lengthy period. Not having been arrested, the police had no statutory power to detain the appellant, which they undoubtedly did. What is critical here is the extent of the duration of the detention. When the caution interview

of 4th June commenced the appellant had been kept two nights and virtually two full days in police custody, being extensively questioned over that time as to his possible involvement. He had been required to sleep at the police station premises. The reason given by the interviewing officer for commencing this interview was that further information had come to hand. He informed the appellant he wished to question him further in regard to information the appellant had already given in assisting the recovery of items stolen from the murdered woman. The appellant then initially implicated Shalen, but after further questioning confessed to having been responsible for the death himself. This critical admission did not come until the morning of 5th June.

With respect to the Judge, we are satisfied he placed insufficient weight on the effect of the continued detention in the circumstances,and the undue pressure which must have resulted when the questioning continued. The detention would also seem to be a clear breach of s.27(1)(b) of the Constitution, which gives a detained person the right to be promptly released if not charged. The importance of the Constitutional provisions, and the likely consequences if they are breached, must be kept firmly in mind. In this case, s.27(1)(b) adds force to the established common law position and itself may well have been determinative here . Detailed consideration however is unnecessary in the circumstances, particularly as the point was not expressly covered in the appellant's submissions. In the whole of the circumstances we are taken to the clear view that the two later statements - the caution interview of 4th June and the subsequent charge statement - were obtained unfairly and in oppressive circumstances, and were therefore wrongly

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admitted in evidence.

We do not think the criticisms have the same weight in respect of the first interview which commenced at 10:45 a.m. on 3rd June, and we are not persuaded that, although perhaps borderline, the Judge erred in holding that there was a lack of demonstrated unfairness requiring the exercise of his discretion to exclude that evidence. There is of course no prohibition against re-visiting that ruling at a further trial.

In the result the appeal is allowed, the convictions are quashed, and a new trial is ordered.

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Sir Thomas Eichelbaum
Presiding Judge

FIJI COURT OF APPEAL

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Rt. Hon. John S. Henry
Justice of Appeal

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Sir Rodney Gallen
Justice of Appeal

Solicitors:

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