

**IN THE COURT OF APPEAL, FIJI**  
**ON APPEAL FROM THE HIGH COURT OF FIJI**

**CRIMINAL APPEAL NO. AAU 143 of 2014**  
**(High Court HAC 176 of 2012)**

**BETWEEN** : **RAJENDRA BAKA**

*Appellant*

**AND** : **THE STATE**

*Respondent*

**Coram** : **Chandra RJA**

**Counsel** : **Mr M. Fesaitu for the Appellant**  
**Mr M. D. Korovou for the Respondent**

**Date of Hearing** : **30 April 2018**

**Date of Ruling** : **11 June 2018**

**RULING**

[1] The Appellant was charged for murder contrary to section 237 of the Crimes Act, 2009.

[2] The Appellant was found guilty by the unanimous opinion of the Assessors which was concurred by the learned High Court Judge. The Appellant was convicted and was sentenced on 8<sup>th</sup> October 2014 to life imprisonment with a non-parole period of 20 years.

[3] The Appellant filed a notice of appeal by himself, but filed an amended notice of appeal through Counsel subsequently which contained the following grounds of appeal:

- “1. *That the learned trial Judge failed to adequately address the assessors on the confession made by the Appellant in the caution interview particularly as to whether the Appellant had made the confession.*
2. *The learned trial Judge erred in law and in fact in relation to the evidence Muneshwar Chand (prosecution witness 2) to the extent that:*
  - (i) Directing the assessors of what Maika told Muneshwar Chand when in fact Maika was not called as a witness to give evidence during the trial;*
  - (ii) Rely on Maneshwar Chand’s evidence to convict the Appellant; Therefore causing a miscarriage of justice to the Appellant.”*

[4] The Appellant and his de facto wife had been on a fishing boat anchored near Bekana Reef. After an exchange of some words he is alleged to have stabbed his wife on the chest. This injury had cut the right lung. The cause of death was excessive loss of blood due to stab wound. He had admitted stabbing the deceased in his caution interview and the charge interview. At the trial the Appellant had taken up the position that the deceased had stabbed herself.

[5] The first ground of appeal is about the inadequacy of the summing up. Counsel for the Appellant submitted that the learned High Court Judge had in his summing up inadequately directed the Assessors as to whether the Appellant regarding the confession, by stating in his summing up that it was up to the Assessors to decide whether the

Appellant made the confession voluntarily, and if they are sure that the confession was made voluntarily, then they could consider the confession. Counsel argued that that by doing so, he failed to place before them the position that, if they decided that it was not voluntary that they should disregard the confession.

- [6] Counsel for the Appellant as well as Counsel for the Respondent cited the decision in Volau v State [2017] FJCA 51; AAU0011.2013 (26 May 2017) in support of their submissions. Counsel for the Appellant citing the decision to favour his submission that the summing up was inadequate while Counsel for the Respondent cited same to support his submission that the summing up was adequate.
- [7] The prosecution relied to a great extent on the caution interview statement of the Appellant as there was no direct evidence regarding the incident. The caution interview statement was admitted as evidence after a *voire dire* inquiry.
- [8] In his evidence at the trial, the Appellant got a second opportunity to canvass the voluntariness of his statement. He had in his evidence stated that he gave his statement in his caution interview statement voluntarily but was frightened. Would this affect the voluntariness and truth of his statement? The submission on behalf of the Appellant gets much weight when considered in this light and therefore the question whether the summing up was adequate becomes arguable. I would grant leave to the Appellant on this ground.
- [9] The second ground of appeal relates to a matter of hearsay evidence. Ganeshwar Chand who gave evidence had not witnessed the actual incident. However, in his evidence he had stated that Maika had told him that the Appellant stabbed his wife. Maika had not been called as a witness.




- [10] It was argued by Counsel for the Appellant that Ganeshwar Chand's evidence regarding what Maika had told him was inadmissible as Maika did not give evidence at the trial. He further argued that the learned High Court Judge had in his judgment stated that the prosecution relied on the evidence of the Doctor, Ganeshwar Chand and the confession in the record of the caution and charge interview.
- [11] Counsel for the Appellant argued that the reference to Ganeshwar's evidence in arriving at the decision to find the Appellant guilty was indicative of the fact that Ganeshwar's evidence which included what Maika had told him was prejudicial to the Appellant.
- [12] On the other hand Counsel for the Respondent argued that the conviction was based on the Appellant's admission in his caution interview statement which was supported by the Doctor's evidence and that the conviction was not solely based on Ganeshwar's evidence.
- [13] As to whether the evidence of Ganeshwar may have had any weight in finding the Appellant guilty in the circumstances of the case is arguable and therefore I would grant leave on this ground.

**Orders of Court:**

*Leave to appeal against conviction is granted on the two grounds of appeal in the amended notice of appeal.*



  
Hon. Justice S. Chandra  
**RESIDENT JUSTICE OF APPEAL**