

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 05 of 2013

BETWEEN: **THE STATE**

A N D: **RAVINESH DEO AND ASHNEEL KAMAL**

Counsel: Ms. P. Low for the State
 Mr. E. Maopa for both Accused

Date of Ruling: 11th October 2013

RULING ON VOIRE DIRE

1. Ravinesh Deo and Ashneel Kamal are been charged by the Director of Public Prosecutions on one count of 'Arson' contrary to section 362 (a) of the Crimes Decree 2009. It is alleged that the accused, between 11th day of December 2012 and 12th day of December 2012, willfully and unlawfully set fire to the Labasa Branch office of Westpac Bank Corporation.
2. The prosecution expects to adduce into evidence the two statements made by the two accused whilst they were interviewed by the Police under caution on 31st December 2012, 01st January 2013, 04th January 2013 and 05th January 2013. The

statements of the accused do contain certain admissions to the alleged incident of 'arson'.

3. Both the accused challenged the admissibility of caution interview statements on the following grounds:

- They were subjected to inhumane treatments whilst they were in the custody of Labasa Police Station, such as assaults, threats, not allowed their parents or relatives to be visited, not allowed medical examinations or treatments despite requests and denied their right to counsel, Ravinesh Deo (1st accused) was kept in custody over 24 hours. Their houses were searched without a search warrant, and their parents were not notified about their arrests.
- Secondly, the accused claim that they were pressured, assaulted and threatened during their cautioned interviews to answer the questions and they had to confess to the allegation.

4. Since both the accused challenged the admissibility of their cautioned interviews recorded by the police whilst they were in police custody, this *Voire Dire* inquiry was held to determine the admissibility of those two statements.

5. In the case of **State v Rajesh Deo Sharma** (Case No. HAC 08 of 2008L) Justice Nawana noted that;

"A confession is a statement admitting or acknowledging all facts necessary for conviction on an offence, which would be distinct from a mere admission of certain facts, which if true, would still not by themselves satisfy all elements of the offence to secure a conviction. It could be either wholly or partly adverse to the person who makes it – whether made to a person in authority or not. The law permits a confession to be led in evidence if it is relevant to the matter before court; and, if it is not excluded at court's discretion under the criteria laid down by law."

6. In the most frequently cited case authority of **Ganga Ram & Shiu Charan v Reginam**, (Criminal Appeal No: 46 of 1983) their Lordships of the Fiji Court of

Appeal made following remarks in respect of the issues pertaining to the admissibility of a confession.

“...it will be remembered that there are two matters each of which requires consideration in this area. **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** (1941) AC 599. **DPP v Ping 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. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account...”

7. An array of English case authorities, before and after Sang (supra), shows that the judgments are based on the maxim “*nemo tenetur se ipsum prodere*”; or no man is to be compelled to incriminate himself. Lord Diplock, in Sang (supra) at page 436 made following observations in respect of the evidence obtained from the accused, after commission of the offence.

The underlying rationale of this branch of the criminal law...is...now to be found in the maxim nemo debet prodere se ipsum....That is why there is no discretion to exclude evidence discovered as the result of an illegal search but there is discretion to exclude evidence which the accused has been induced to produce voluntarily if the method of inducement was unfair.

8. Even in much recent cases, such as Khan [1997] AC 558, the House of Lords had kept the reliance upon the dictum of Lord Diplock in Sang (supra).

9. Section 78 of the Police and Criminal Act 1984 of the United Kingdom now governs the arrears of ‘improperly obtained evidence’ and fairness of proceedings in such instances.

(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

10. As decided in **Cooke** ([1995] Crim. LR 497), ‘fairness of proceedings’ represents fairness to both the accused person and public. In the case of **Fax** [1986] AC 281, it was decided that the discretion exercise by the common law judges to exclude the evidence unlawfully obtained will not be used in a situation when those who obtain the evidence make a bona fide mistake as to their powers. But, evidence can be excluded if such persons resort to trickery, deception or oppression. Nevertheless, in **Adams** [1980] QB 575, it was said that the admission of evidence discovered as a result of an illegal search is also subject to the discretion of the judge.

11. It was said in **Quinn** [1980] Crim LR 581 by Lord Lane CJ that:

“The function of the judge is therefore to protect the fairness of the proceedings, and normally proceedings are fair if a jury hears all relevant evidence which either side wishes to place before it, but proceedings may become unfair if, for example, one side is allowed to adduce relevant evidence which, for one reason or another, the other side cannot properly challenge or meet, or where there has been an abuse of process, e.g. because evidence has been obtained in deliberate breach of procedures laid down in an official code of practice”.

12. The legal principles governing this branch of law in Australia and New Zealand show similar features as in England. As it was analysed in detail by Cooke J (with Richmond P and Woodhouse JJ) in **R v Horsfall [1981]** 1 NZLR 116 at page 122,

“It is elementary that the Judges Rules are not rules of law, nor to be applied in any strict way in disregard of their spirit. But they are guides to matters bearing on fairness and breaches of them are not lightly condoned”.

In **Collins v The Queen (1980)** 31 ALR 257 had recognized the Australian set up to exclude a voluntary admission if it has been obtained unfairly.

13. Bearing this legal background in mind I now turn to see the evidence led by the prosecution during this *Voire Dire* inquiry. The 1st prosecution witness was PC 3438 Rupeni Raga. He had seen the fire at Westpac Bank on 11th of December 2012, or rather early hours of 12th December 2012 whilst patrolling in the town. PC Rupeni had alerted the Fire Department and the Manager of the Bank.
14. PC 4840 Tomasi was the 2nd prosecution witness. He is from the Scene of Crime Unit attached to Labasa Police Station. He had visited the crime scene when it was still on fire and observed the fire fighters trying to put away the fire. After their task was completed, PC Tomasi had taken 16 photographs of the crime scene. He tendered those to court marked as Prosecution Exhibit No. 01.
15. Corporal 2535, Vidya Pillay was called next. Whilst he was on patrol duty in Labasa Town on 31st of December 2012 around 0015 hours, he had received a call from the Labasa Police Station to go to a certain place and meet a Fijian boy, who had some information about the ‘Westpac fire’. Corporal Pillay had gone to that place and met the ‘informant’ as detailed. The informant had told him that two Fijian boys are in Labasa Town carrying a ‘Black Bag’ containing house breaking instruments and they are planning to burn the Westpac Bank once again during that night. The informant had given Corporal Pillay a description of the cloths that the ‘boys’ were wearing and revealed one is ‘Ravinesh Deo’, who was released from the prison recently.

16. Upon receiving this information, Corporal Pillay and PC Vikash had started to look for the two boys around Labasa Town. Police Officers had managed to locate the 'two boys' inside a 'Night Club' and waited outside for the 'boys' to come out. From the 'Night Club' the 'two boys' had gone to Royale Diner Hotel and police officers had followed them. Corporal Pillay had informed this to Divisional Crime Officer (DCO), Inspector Prakash and he was instructed to guard the front and back doors of the hotel and arrest the boys, if they come out. He had been on duty at the hotel until the day shift officers had come to relieve him. Tendering his 'Record Book' as Prosecution Exhibit No. 02, Corporal Pillay read his notes in open court, apart from the details of the informant. Finally, Corporal Pillay identified both the Accused positively as the 'two boys' whom he followed from the 'Night Club' to the Hotel on the early hours of 31st December 2012.
17. PC 3270, Vikash was called as prosecution witness No. 04. He was on patrol duty with Corporal Vidya on the night of 30th December 2012. PC Vikash corroborated the narration of Corporal Vidya in respect of the information received by the 'informant', identifying the 'two boys' and following them to Hotel Diner. The witness said that he managed to identify Ravinesh Deo, the 1st accused as he had charged Deo on a previous occasion. According to PC Vikash, he had joined Sergeant Mani and DC Sanjeet at about 8.10am on 31st December 2012 to enter into Room No.104 of Hotel Diner. The witness said that they saw the two suspects sleeping in that room. They were said to be 'fully drunk' and 'fast asleep'. Police Officers had woken them up and Sergeant Mani had explained them as to why the Police Officers are there and the information the police received on the 'arson' of Westpac. PC Vikash said the suspects just listened to Corporal Mani when he explained their rights. The police officers had managed to recover a 'Black Bag', kept under the bed of the 1st accused, which contained a gallon of benzene, tin cutter, homemade bomb, mosquito coils and match sticks. Since the suspects could not steadily walk, the witness said, that the police officers held them and helped them to the police vehicle and then to the Police Station. PC Vikash finally said that he saw an injury on the lower lip of the 1st accused. PC Vikash tendered his notes entered in his police record book, as Prosecution Exhibit No. 03, after covering the details of the informant.

15. In cross-examination, PC Vikash confirmed that he didn't see a 'Black Bag' when he saw the 'suspects' came out of the Night Club. He refused the suggestions that he kicked the suspects to wake them up and grab them outside the hotel after arrest. PC Vikash admitted that he did not record in his notes that he observed an injury on the lower lip of the 1st accused. The witness said that neither he nor Sergeant Mani assaulted the 1st accused. Further he said that he is not aware whether anybody else did so.
16. Acting Inspector Ajesh Mani testified as the 5th prosecution witness. With the instructions of Divisional Crime Officer, ASP Prakash, he had gone to Royal Diner Hotel with a search warrant and arrested both the suspects. DC Sanjeet and PC Vikash had accompanied him. Inspector Mani told that he introduced himself to the suspects, explained the reason for their presence and offered all the rights to the suspects before their arrest. The witness told court that both the suspects were heavily smelt of liquor and staggering on their feet when they woke up. Inspector Mani had noticed the injury on the lower lip of the 1st accused at that time.
17. Inspector Mani testified that they recovered a black bag containing a black gallon of fuel, white empty gallon, two black and white pompoms, mosquito coils, homemade bombs, black and grey gloves, spanner and a tin cutter, while kept under the bed of Ravinesh Deo, the 1st accused. This black bag containing all the items was marked as Prosecution Exhibit No. 05. Witness had brought the two suspects (as positively identified as the two accused in court) to Labasa Police Station under Serial No. 54 of the Station Diary at 0847 hours on 31st of December 2012.
18. According to this witness, he had handed over the suspects to the Divisional Crime Officer and the recovered items to Sergeant Beni. Divisional Crime Officer had ordered the suspects to be kept in the cell for them to rest a while. Inspector Mani confirmed that neither him nor any other officer assaulted, punched or kicked the suspects, either on the way to the Police Station or at the Crime Office. Later, Inspector Mani had counter signed the cautioned interview of Ashneel Kamal, 2nd accused as the witnessing officer. He said that the 2nd accused was looking fresh and was given all his rights before he was interviewed under caution. Inspector Mani admitted that Ashneel Kamal was released from

police custody on 01st January 2013 for want of evidence and charged again on 04th January 2013. The Cell Book Diary of Labasa Police Station dated 31st December 2012 was tendered to court as Prosecution Exhibit No. 06 by Inspector Mani.

19. In cross-examination, Inspector Mani refused to admit that they kicked or assaulted the accused to wake them up at the hotel before their arrest. He denied the injury on the lower lip of Ravinesh Deo, the 1st accused was caused by them. Inspector Mani admitted that though the wallet and the mobile of the 1st accused were inside the 'black bag' when it was recovered, it is not to be seen now and the entry no. 54 of the Cell Book Diary says Ravinesh Deo (1st accused) was injured when brought to the station. He denied the suggestion that he along with other officers assaulted the two accused by kicking and stabbing after they were brought to the Station. Inspector Mani could not recall whether or not he took Ashneel, the 2nd accused to Delailabasa Police Post. Nevertheless, he said that both accused were put in the cell at the same time. Further, the witness admitted that he never informed the arrest of Ashneel, the 2nd accused to his parents and the wallet, ID of the 1st accused and gallons are not in court along with the black bag to identify.
20. Inspector Mani stressed in Court that he offered all the rights to the suspects before arrest, though they were drunk. Whilst admitting that the 2nd accused climbed over a fence/gate of Westpac Bank to reach its roof during the reconstruction process, witness denied the suggestion that the 2nd accused's hand was injured on that occasion. It was further admitted by Inspector Mani that the two suspects were never confronted when they were kept in police custody. Inspector Mani said that when he went to bring the cloths of the 2nd accused after the 2nd arrest, he did not have a search warrant and therefore he did not go inside the accused's house. He admitted that the 2nd accused made a complaint against him to the police department.
21. Sixth prosecution witness was DC 2925 Prabin Lal. He had interviewed the 1st accused under caution on 31st of December 2012. He had observed a slight 'cut' on the lower lip of the accused before the cautioned interview. The witness said upon asking the accused about the said injury, he told that it occurred while having beer at the Night Club. According to DC Lal, accused did not come out

with any complaint of anything or anybody. He was explained and given all his rights, such as to consult a lawyer or a Legal Aid Representative or a family member. Accused was said to have refused to contact anybody. Interview had been done in Hindustani Language. It has started at 1520 hours and finished at 2015 hours for the day. The continuation of the interview had commenced at 8.00 am on 01st of January 2013 and concluded at 1700 hours. It was claimed by the witness that breaks were given in between to the accused to rest and for meals. The witness described the 'reconstruction' of the 'crime scene' with the assistance of the 1st accused. It was said that the 1st accused climbed over the gate and showed DC Lal, the witnessing officer and other police officers how he managed to reach the roof of the bank.

22. On top of the roof, DC Lal said, the accused approached him and told that neither he cut the roof nor he set the fire to the bank. After going back to the station from the scene, the caution interview had continued and the 1st accused once again admitted the allegation of setting fire to the Westpac Bank. DC Lal read the cautioned interview in open court and tendered the original Hindustani script as Exhibit No. 08 A and its English translation as Exhibit No. 08 B.
23. It was highlighted in Court that the accused did not have much knowledge or understanding of his rights as he had gone only up to class 06. Witness admitted the accused's explanation as to how the injury took place at the night club is not in record and said that is because, he asked it before the interview commenced. DC Lal said he did not do anything to the said injury and he gave breaks to the accused just to rest during the interview and not because the accused was in pain. DC Lal admitted that it was he who told the accused to climb the gate in the process of reconstruction of the crime scene as it was the accused who told how he reached the roof. He said the 'denial' of the allegation by the accused at the top of the roof was not a whisper to him, but heard by other officers as well. DC Lal rejected the suggestion that the 1st accused admitted the allegation because of the influence of some other police officers who were present at the Crime Office while the interview was recorded. Further he refused the suggestion that it was he who wrote the answers without accused giving his own answers. DC Lal admitted that he did not read the whole record to the accused as he told it is not required. Finally, DC Lal denied the propositions that either

him or other police officers pressured or placed their authority to the accused to get the answers during the cautioned interview.

24. In answering to a specific question from court, DC Lal said the 1st accused climbed the iron gate of the bank and managed to get to the roof with the assistance of the guttering of the roof and the boundary wall of the next building to the bank.
25. Acting Detective Sergeant 2480 Virendra Nandan was the 7th prosecution witness. He was the witnessing officer of the cautioned interview of the 1st accused. DS Nandan basically confirmed what DC Lal narrated in court regarding what took place from the beginning of the interviewing process. Apart from the above stated duty, DS Nandan had uplifted two mosquito nets, a container with small pieces of mosquito coils (marked as Exhibit No. 10) and a 'Vodafone Card' from the house of 1st accused. The information to obtain a Search Warrant, the 'Search Warrant' and the search list were tendered to court as Exhibit No. 09. DS Nandan claimed the mosquito nets uplifted from the accused's room is similar to the mosquito net the police recovered from the 'black bag' when the 1st accused was arrested.
26. In court, DS Nandan confirmed the 1st accused admitted the offence in his presence during the cautioned interview and had an injury on his lower lip. The witness refused the suggestion that nothing was given to the accused during the interview and said meals and water were provided during breaks. DS Nandan claimed though he obtained the signature of the mother of the accused to the search list, he forgot to write that he found the nets from the accused's room. Finally he said that he is not sure whether the nets were belong to the accused or not and does not know whether any scientific analysis was done in identifying those nets.
27. Detective Constable 3536 Ashish Kumar and Women Detective Constable 2440 Faridan Bi testified next regarding the charging process of the 1st accused. DC Ashish said he gave all the rights of the accused before charging and the accused was not forced or threatened or oppressed or induced during the charging process. The charge sheet was marked as Prosecution Exhibit 11 A and it's

English translation as Exhibit No. 11 B. Finally, DC Ashish positively identified the 1st accused from the dock.

28. In cross examination, the main concern was the alleged admission made by the 1st accused during the charging process; more precisely, question no. 11. The defence challenged that the Charging Officer should have obtained a signature of the accused, before he recorded the alleged 'inculpatory' statement.
29. Detective Constable 3651, Vimal Sharma, was the Interviewing Officer of Ashneel Kamal, the 2nd accused. He said that he offered all the rights to the accused to seek assistance from a private Lawyer or to seek Legal Aid Assistance or a family member or a friend. The interview had conducted at the Crime Office in Hindustani Language. The accused had informed DC Vimal that he will exercise his rights later on. The interview had started on 31st of December 2012 and continued on 01st of January 2013. Then the accused had been released according to the instructions of Sergeant Mani, as there was no enough evidence against the accused. This interview had commenced and continued on 04th January 2013, upon the re-arrest of the 2nd accused. DC Vimal Sharma said that there was "some evidence" against the 2nd accused in the CCTV footage and after that been shown to him, the accused admitted the offence. The accused had been taken for 'reconstruction' of the crime scene as well. Sergeant Mani had been the witnessing officer during the caution interview. DC Sharma testified that no threat or assault done to the accused during this process. The witness identified the original Hindustani notes of the cautioned interview and tendered it to court as Prosecution Exhibit No. 12 A and its English translation as Exhibit No. 12 B. Finally, he said that he went to the accused's house with Sergeant Mani and the accused to bring the 'cloths' worn by the accused at the time of the commission of the alleged crime. According to DC Vimal, after informing by the accused to his mother, she brought some cloths voluntarily to the vehicle where it was stopped and the police officers never went inside the house.
30. In cross examination, DC Vimal refused to accept that he assaulted the accused at any point of this process. In 'reconstruction', he said that both him and the accused climbed the gate and reached the roof as there was no ladder. He denied the suggestion that accused got injured or complained of anything as such during the reconstruction. The proposition of the defence, that the 2nd

accused was first released after he implicated the 1st accused in a plain statement, was turned down by the witness and said that what he recorded was what he was told by the accused.

31. Detective Corporal, 2794, Sanjeet Lal was the Charging Officer of the 2nd accused. After giving all the rights of the accused, he said, the charging was done in Hindustani Language. The accused had allegedly made an 'inculpatory' statement when charging. The witness identified the original Hindustani version of the charge statement and tendered it to court as Prosecution Exhibit No. 13 A and its English translation as Exhibit No. 13 B.
32. The witness did not agree with the suggestion of the defence that the accused could not understand the charge and he signed the charge sheet with the fear of him been assaulted again.
33. Detective Constable 3490, Francis Aisea was the 12th prosecution witness to take stand. His duty had confined only to escort the 2nd accused from the charge room to the Crime Office on 31st of December 2012 around 1640 hours. He said he was called by Sergeant Mani to carry out this piece of duty when he was at home. The witness identified the entry no. 188 of the Station Diary, dated 31st December 2012 and tendered it to court as Prosecution Exhibit No. 14. Whilst positively identifying the 2nd accused from the dock, DC Aisea said that when he picked the accused from the Charge room the accused looked sober and normal.
34. It was suggested to DC Aisea that he brought the 2nd accused to Labasa Station from Delailabasa Police Post around 1640 hours. The witness plainly refused to admit it and said he took part in 2nd accused's reconstruction process.
35. The 13th and the final witness of the Prosecution was Detective Sergeant Beniama Rokoua. He has been in the Fiji Police Force for 26 years. He is the Investigating Officer of this case and had done the general supervision. He basically narrated the events took place from the fire of Westpac bank to suspects been produced before court and then for Medical examination. He confirmed that there was no ill treatment, assault or harm done to either accused whilst they were in Police custody. DS Beniama tendered the Medical Report of the 2nd accused marked as Prosecution Exhibit No. 15 with the consent of the defence.

36. In cross examine, DS Beniama admitted that the Cell Book Diary pertaining to this case was located only on last Sunday after been declared 'missing'. The witness denied that the accused were assaulted or threatened by his fellow officers by kicking and stabbing and squeezing their necks in his presence. DC Beniama said that he cannot recall whether the 2nd accused was taken to Delailabasa Police Post, handcuffed to a table and further assaulted. He said that he did not do anything to the injury on the lip of the 1st accused as it was just a bruise and the accused was conversing well when questioned him. He denied the possibility of 1st accused been not in his proper state of mind to answer the questions over this 'injury' on the lip.
37. DS Beniama explained court that there is no confusion in the entries of the Station Diary and the Cell Book Diary. Entry No. 54 of the Station Diary [dated 31st December 2012] refers to suspects been brought to the Station at 0847 hours. Entry No. 188 is to bringing the 2nd accused for questioning from the charge room as he was not kept in a cell. Entry No. 1640 of the Cell Book diary says the 1st accused was locked in the cell and No. 1642 says the 2nd accused was locked in the cell at 2010 hours, after his interview lapsed for 31st December 2012.
38. The Prosecution rests their case with the above summarized evidence of 13 police witnesses. Then the defence case was called and the two accused along with a doctor testified to support the case of the defence.
39. Ravinesh Deo, the 1st accused said under oath that he was assaulted with punches and kicks to his chest, ribs, legs and back by Inspector Mani and police officer Aisea along with two other i-taukei officers entered to the hotel room where he was staying with the 2nd accused. Apparently, Ravinesh had opened the room door upon hearing somebody knocking the door. He had seen Sergeant Mani and Police Officer Vikash kicking and punching the 2nd accused who was sleeping in the same room. He claimed that his lip got injured when Mani punched his lips. Ravinesh Deo said that he was taken alone to the Police Station and was assaulted by punching and kicking to his face by 04 Police Officers (names are not know) in upstairs. He said one officer wiped out the blood came out of his nose and lips. The officer who had gone in search of his house (must have referred to Acting DS Virendra Nandan) was also named as an

assailant. The alleged assault in this upstairs room had taken place for 10-20 minutes before he was put in a cell. Ashneel Kamal, the 2nd accused had been brought to the same upstairs room during this alleged assault. The 1st accused had witnessed IP Vikash and other officers assaulting Ashneel as well.

40. Ravinesh Deo said that he was assaulted during the interview and with his bleeding lips, he did not understand what happened during the interview. He had been taken to the 'crime scene' by the police officers and when he refused to admit the 'fire' he had been assaulted again. The accused claimed that police officers took his photographs at the scene. On the roof of Westpac Bank, after climbing the gate he said that he was assaulted again. Ravinesh accused 04 police officers assaulting him once again after the interview. His requests to take him to the hospital had been turned down. He said that he was assaulted even when he was charged and he "just signed" whatever given to him. When Ravinesh was produced before the Magistrate's Court, he had complained of the alleged 'assaults' and the learned Magistrate had referred him for a medical examination. He said that he had chest pains and rib pains over the assault. Finally, he said that Sergeant Mani requested him not to tell his name in court and promised that he will supply groceries to his mother.
41. The learned prosecutor cross examined the accused at length. Describing the 'assault' at the hotel room, Ravinesh said, he received 05 to 06 punches on the face, chest and ribs and 08 to 10 kicks to ribs and thighs. Accused said though he was still drunk that morning, was not staggering and admitted Sergeant Mani, Aisea, Vikash and other officers who testified in court are bigger than him in built. Further, the accused admitted that there was a 'black bag' inside the room though it did not belong to him and the same bag was taken to the police station when he was escorted to the police station from the hotel room. Ravinesh agreed with the prosecutor that he did not complain to any officer at the station about his 'lip' when first taken to the station. Accused said the lip injury was small when went to the station but got bigger when he was further assaulted.
42. Elaborating the assault in 'upstair room', Ravinesh said that Mani, Aisea and several other officers (around 05) punched his ribs on both sides for 04-05 times and kicked around 10 times on his thigh until he fell down. Ravinesh claimed that all his assailants were wearing police shoes. The accused said whilst he was

assaulted he was asked to sign some documents. He was very specific that Sergeant Beniama, though present among other officers, did not assault him. Ravinesh said that he fell down once on the floor when he was assaulted. Due to the alleged assaults, he claimed that one of his ears got numbed and painful; cheeks got swollen and tender, had a big bleeding cut on the lower lip and bleeding from the nose. Nevertheless, the accused admitted that he speaks Hindustani since birth and the interviewing officer was calling him in Hindi. He had answered to the said officer in Hindi and the said officer had been writing whilst talking to him when he was interviewed. Ravinesh said even though he was not assaulted, was subjected to threats during the interview and he did not have any breaks. At one point, the accused admitted that he signed the documents written by the interviewing officer and the answers in those papers were given by himself. Prosecution suggested that it is impossible to assault the accused when he was taken for the reconstruction in broad day light, in a crowded area where the bank is. Accused said nobody saw him climbing or been assaulted by officers.

43. Ravinesh Deo admitted that on top of the roof, during the 'reconstruction' he told one police officer that he did not set fire to the bank. Further, Ravinesh admitted that he told everything to the doctor, and the doctor recorded everything what he told and checked his chest, thighs, ribs, stomach, nose and lips. The conclusion of the learned prosecutor was that Ravinesh was never assaulted by the police officers from the point of arrest till he was produced before court and therefore his cautioned interview and charged statement were given by his own free will.
44. Doctor Roy Blanco Farales was the 2nd defence witness. He had examined the 1st accused with the directive of court. He tendered the Police Medical Examination Report of the 1st accused as Defence Exhibit No. 01 and said he identified an 'infected bruise on lower lip' and 'slight tenderness on right face, left lower jaw, right lower chest (anterior) right and left thigh (interior)' [D (12)] and expressed his professional opinion as "bruise and tenderness of muscles due to blunt trauma less than 1 week old" [D (14)]. The doctor expressed his expert opinion on the 'duration' of 'alcoholic effect' to be less than 24 hours. Nevertheless, he said that it might vary with the age, amount of consumption and the condition of the kidney and liver.

45. In cross examine Dr. Roy said that Ravinesh, the patient told him that 'he was punched by a Fijian police officer at Royale Diner Hotel Labasa at 9.00am, Sunday the 31st December 2012.' [D (10)]. Doctor said his 'patient' was "calm, alert, walking and conscious" when came to him for the medical examination. Defining the term 'bruise', the doctor said, "*it is an injury with an intact skin or no opening of skin while the blood released from damaged vessels remain under surface*". He agreed with the learned prosecutor that it is an inflammation from inside or redness on the lip. In answering how he ascertained 'tender' muscles the doctor said when a patient tells him that a certain place is painful and withdraws when he touches or slightly presses that place, he concludes that place has a 'tenderness'. The accused in this instance, had told him that the identified areas with 'tenderness' are painful, upon the doctor's touch. Dr. Roy admitted that there is a possibility for a patient to react like painful, though it is not so and he will still conclude that the patient has a 'tenderness'. In assessing the time of the injuries, the doctor said the 'bruise' should have occurred within 03days of his inspection and it could be 30th of December 2012 as well. Apart from the accused's version of 'punch', the doctor said that, hitting the lip on a table in a night club, putting a bottle of beer hard on the lip or a slap on the lip are some other possibilities to cause such a bruise.
46. The doctor was very firm on the narrated history by the 1st accused and said that he was never told anything about punches to the ears or to cheeks. Had that been so, the doctor said, the ear drum could have been damaged and the blood clots could have seen even after 02 days. Further, he said in such a situation that certain marks on cheeks could have been visible. The doctor had not seen any of those signs or marks, not only on accused's ears and cheeks, but chest and thighs as well. Dr. Roy added that these 'marks' depend on the 'power' attached to the punch or the kick.
47. Finally, Ashneel Kamal offered evidence from the witness box. On 31st of December 2012 while he had been sleeping in a room at Royale Diner Hotel, he had suddenly woke up with some noises. He had seen 2 I-taukei and 2 Indian police officers (inclusive of Sergeant Mani and Aisea) assaulting the 1st accused with kicks and punches and dragging him out of the room. Police officer Vikash had kicked Ashneel's thighs from the back and taken him to the station as well.

When Ashneel was taken to the upstairs of Labasa Police Station, he had seen the 1st accused sitting on the floor without a shirt surrounded by 07 – 08 police officers. They had been assaulting the 1st accused. Ashneel had also been assaulted with kicks by the officers inclusive of Vikash, Aisea and Prabin. After about 01 minute Ashneel had been taken to another room and showed the items inside the 'black bag'. He had told the officers that he had not seen the bag before and it does not belong to him. He said that he was assaulted again to say that bag belongs to the 1st accused. At last he had agreed to do so, but he changed his mind when he was confronted with the 1st accused. Ashneel had been assaulted again and hand cuffed to a chair in a separate room. Later, Ashneel had been taken to Delailabasa by Sergeant Mani. Ashneel had then been hand cuffed and tied to a table. Sergeant Mani had provided him lunch. Ashneel had been offered a better job and financial help by Sergeant Mani on the way to Labasa Police Station, if Ashneel says it was the 1st accused who burnt the bank. Upon agreeing with Sergeant Mani, Ashneel had signed several documents prepared by the police. The following day he was given \$5.00 by Mani and asked to go home. But, Mani has taken him again to Labasa Market Police Post and asked him to sign certain documents. Thereafter he had been dropped at his house. Ashneel had not complained about the assaults to anybody before 04th January 2013 as Sergeant Mani had threatened him not to do so.

48. On 04th of January 2013, Ashneel had been arrested again and brought to the station. He had been threatened to throw out of the 2nd floor if he does not sign the papers and he had agreed to sign whatever they prepare. He had been slapped by Vimal at that time. Then he had been taken to the Westpac Bank and ordered to climb the gate and then to the roof. His palm received a cut injury during this process. According to Ashneel, Sergeant Mani had gone to his house and got a brown shirt and a blue jeans of him. Upon producing Ashneel to court, he had informed the learned Magistrate through his Lawyer that he had been assaulted. He had then been referred for medical examination and the Police Medical Report was tendered to court as defence Exhibit No. 02.
49. In cross examination, Ashneel admitted that he told the entire story or what had happened to him whilst in custody, only on 09th October 2013, even to his counsel. Prosecution suggested that the new assertions of the 2nd accused such as Sergeant Mani gave him \$5.00, offered him a good job and income, could not put

to Sergeant Mani when he offered evidence as those came rather late from him. Ashneel said that even though his counsel asked him the whole story, he told him only some parts and he recalled everything today whilst giving evidence. It was put to the accused that Aisea came to the Station at 1640hours on 31st December 2012 only to escort him for questioning. Accused said he saw Aisea before that and in fact Aisea assaulted him. Ashneel stressed that he was kicked and punched by the officers and even showed the cut injury in his palm to the Magistrate on 07th January 2013. He said, he does not know why the doctor did not put that injury in his medical report as he told the doctor about that injury. The learned prosecutor suggested that the entire allegation is a made up story as according to the Medical Report there is no evidence of injuries from kicks, punches and assaults. The conclusion of the prosecution was that all the answers given by the 2nd accused during the 'cautioned interview and in charge statement were given voluntarily and in his own free will. It was finally suggested to Ashneel that he is lying to court on what he saw, simply to safe guard his friend, the 1st accused.

50. The above paragraphs amply demonstrate how both parties attempted to put their best effort to establish their version of the story. The prosecution is heavily relying on the two Cautioned Interviews of the accused and the defence, in contrary challenging the 'voluntariness' of the same. Now I turn to briefly analyse the version of the 1st accused. If what the 1st accused said is correct, he had been brutally assaulted by the police officers at the point of his arrest till charging. The kicks and punches he received to cheeks, jaws, ears, chest, ribs, thighs and back from the police officers who were wearing police shoes should have a great impact on the accused, especially considering his built. The injury reflected on the lower lip started from a very small scale and developed to a bleeding injury via a 'big cut'. There was an alleged bleeding from the nose and a numb ear as well. This outcome could have been possible or rather truth had the accused been subjected to such a 'treatment' from the police officers who testified in this court. Ironically, the medical report does not support or indeed silent on this crucial issue of possible injuries after such a 'huge impact'. The lip injury was made a 'bruise' with an intact skin. No issues with the nose or ears. Ribs are intact, apart from some 'slight tenderness' on certain parts of the body. The medical examination was carried out on 02nd January 2013 and the alleged 'assaults' had occurred on 31st December 2012 and 01st January 2013.

51. On top of that the history narrated by the 01st accused refers only to 'punches' he received from a "Fijian police officer" on 31st December 2012 at Royale Diner Hotel. It does not state all what the 1st accused narrated to court. At least the 'number' of the assailants and the places he was subjected to assault. In this light it is apparent that the accused had narrated a totally new version in court and it is indeed contradictory to what he said to the doctor on the very first day he came out from police custody with a good recollection of sequence of events.
52. The 1st accused in his evidence admitted that he opened the door to the police officers to come inside the hotel room and the 'black bag' contained all the 'house breaking instruments' was found from the room though it does not belong to him. This assertion by the accused negates the possibility of police to 'introduce' or 'plant' the alleged 'black bag' whilst the two accused were sleeping inside the room. This admission of the 1st accused sheds some light to prosecution's version. At the same time the admission by the interviewing officer of the 1st accused, DC Prabih Lal that the accused told him while they were on the roof of Westpac Bank that he did not set fire to the bank also carries a great weight. Questions and answers from 295 to 298 of the cautioned interview reflect the exculpatory statement made by the 1st accused was taken seriously and sought explanation through the accused. Had the police wanted to suppress this statement of the accused, they could have simply omitted to record it in the interview.
53. For the reasons highlighted in the above paragraphs, I do not inclined to believe the narration of the 1st accused as to what took place upon his arrest.
54. Now I turn to see the version of the 2nd accused. The doctor who had examined the accused had not observed any discolourations or deformities in any of the areas the accused had pointed that he received kicks and slaps. Most interestingly, the accused had not shown the 'cut' in his 'palm' to the doctor when he was examined on 08th January 2013 as alleged before the learned Magistrate on 07th January 2013. Even though the doctor had stated the absence of any "signs" could be due to the alleged 'assaults' been taken place 1 week back, it has to be mindful that there were alleged 'assaults' just 03 days prior to

this medical examination and his alleged 'cut' on his 'palm' had 'disappeared' within a day.

55. On the other hand, it was agreed upon by both parties that the 2nd accused was released from police custody on 01st of January 2013 for want of evidence. He had been arrested again on 04th of January 2013 after certain "new material" was revealed. At this juncture, the court is not aware what this 'material' is, but it was told that it was a CCTV footage. The release of the accused in the 1st instance shows that the police had acted fairly in respect of him. Had the accused been so severely assaulted, he could have lodged a complaint against the officers responsible for such an assault as soon as he was released. The 2nd accused was silent for an 'undisclosed' threat' by Sergeant Mani. Nevertheless, when he was re-arrested and produced before court and medically examined a very descriptive narration of the sequence of events had been told to the learned Magistrate and the doctor. Finally, the 2nd accused had recalled all what happened in the 1st week of January this year, almost after 10 months when giving evidence in court. Such a belated narration, not only to court, but to his own counsel, goes to the root of the credibility of the accused. It is in this background, I do not prefer to believe the narration of the 2nd accused as to what took place when he was taken to custody.
56. This court is mindful that disbelieving the versions of the two accused do not necessarily mean that the prosecution has proved their case beyond reasonable doubt. Having carefully considered all the evidence produced by the prosecution, through 13 police witnesses, this court is fully satisfied beyond any reasonable doubt that both the accused made their cautioned interview statements voluntarily. Further, I see no unfairness caused to the accused during the whole process, from the point of arrest to producing them before the Magistrate's Court. In another words, it does not appear that the accused were influenced to make their cautioned interview statements involuntarily.
57. The same remarks apply to both the charge statements as well.
58. In the light of the above. I conclude that the prosecution has proved beyond reasonable doubt that all the admissions made by the two accused in their cautioned interviews and charge statements were made voluntarily and

admission of those statements would not have any adverse effect to secure a fair trial for both the accused. Accordingly, I order the statements made by the accused under caution and the charge statements as relevant and admissible in evidence and can be lead in trial proper, if the prosecution so wishes.

Janaka Bandara
JUDGE

Solicitors

1. Office of the Director of Public Prosecutions for the State
2. Babu Singh and Associates for both Accuseds.