

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 003 of 2011**

**BETWEEN:**           **THE STATE**

**A N D:**               **1.     VILIKESA RAMAQA**  
                             **2.     NIKO QAQARA**  
                             **3.     MORITIKEI NAIYARAGAKI**  
                             **4.     MORITIKEI NAICOBOCOBO**

**Counsel:**             Mr. Vosawale for the State  
                             Mr. Waqainabete for all Accuseds

**Date of Ruling:**     5<sup>th</sup> November 2013

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**RULING ON VOIRE DIRE INQUIRY**

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1. Vilikesa Ramaqa and Niko Qaqara are been charged with two counts of 'Rape' contrary to section 207 (1) (2) (a) of the Crimes Decree whilst Moritikei Naiyaragaki and Moritikei Naicobocobo are facing two counts each for 'Aiding and Abetting for Rape' contrary to sections 45 (1) (2) (a) and 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.
2. Niko Qaqara, the 2<sup>nd</sup> accused challenges the admissions and/or confessions in his cautioned interview on the following grounds.
  - His admissions and/or confessions were obtained by force through continuous physical and verbal abuse during the arrest and interview which took place at Central Police Station by a police officer called Elia;

- His admissions and/or confessions were obtained by force through oppression;
  - He was subjected to assault, threat, intimidation and pressure to confess by Elia and without such admission, he will continue to be subjected to verbal and physical abuse and;
  - There was a breach of his rights under the Judge's Rules and Article 9 (2), 10 (1) and 14 (3) (g) of the International Covenant on Civil and Political Rights – during the interview.
3. Moritikei Naicobocobo, the 4<sup>th</sup> accused challenges his cautioned interview on almost the same grounds as the 2<sup>nd</sup> accused claimed, but, refers only to before and during the time of the interview at the Central Police Station and name two police officers, Inoke and Taufu as the assailants.
  4. The existing law pertaining to the admissibility of confessions is well settled in this jurisdiction. It is the duty of the prosecution to prove beyond reasonable doubt that the alleged admissions and/or confessions were made by the accused voluntarily to a person in authority without any improper practices such as assaults, threats, oppressions or inducements by offer of some advantage/or as a result of breaches of his rights. If the prosecution proves beyond reasonable doubt that such confession and/or admission were made voluntarily, it is still left to prove that no unfairness existed in the way the person/persons in authority acted when such an admission and/or confession were made. (**Shiu Charan v. R.** (FCA. Crim. App. 46/1983).
  5. The prosecution called 3 police officers to testify during the *voire dire* inquiry. Cpl/2708 Elia Waqasoqo was the 1<sup>st</sup> prosecution witness. He was the Interviewing officer of Niko Qaqara, the 2<sup>nd</sup> accused. Corporal Elia told that he gave all the rights of the accused before he was cautioned on the allegation of 'Rape', though the accused did not exercise those rights and neither him nor any other officer assaulted or threatened or forced during the interview. The cautioned interview signed by himself and the 2<sup>nd</sup> accused was tendered to court as Prosecution Exhibit No. 1.

6. In cross examination, it was suggested to Cpl/Elia that he did not follow Rule 4 (a) of the Judge's Rules and allow the accused to write his own version of the story. The witness replied that it can be done during the charging process, but not in the cautioned interview. Cpl/Elia refused the suggestions of the defence that he punched the 2<sup>nd</sup> accused on ribs while the 2<sup>nd</sup> accused was shouting in pain. The witness denied the allegations of a 'pre-arranged' recording of the statement. He said the accused voluntarily admitted the allegation of 'Rape' and it was not because the accused could not stand with the pressure as suggested by the defence.
7. Detective Corporal 2222 Simione Taufua was the interviewing officer of Moritikei Naicobocobo, the 4<sup>th</sup> accused. He confirmed to court that he offered all the rights to the accused, in accordance with the Bill of Rights before the cautioned interview. Whilst tendering the cautioned interview as Prosecution Exhibit No. 2, the witness said he never physically assaulted or verbally abused the accused during the interviewing process and did not allow Elia or any other officer to do so.
8. When questioned by the defence about Rule 4 (a) of the Judge's Rules, DC/Taufua said that they never give any opportunity to suspects to write their own story during the cautioned interview. The witness denied the suggestion that he slapped on the head and the face of the 4<sup>th</sup> accused while interviewing him and said he never forced the accused to admit the allegation. It was further denied by DC/Taufua that he slapped the accused along with Inoke until the left cheek of the 4<sup>th</sup> accused gets swollen.
9. Detective Corporal 3659, Inoke Tui was the last prosecution witness. He said he never assaulted or ill-treated any of the suspects out of 4 and never assisted Cpl/Elia to assault the 4<sup>th</sup> accused.
10. Detective Corporal Inoke refused to admit that either he or DC Taufua punched on the left cheek of the 4<sup>th</sup> accused to get his cheek swollen. At the end of the prosecution case, the learned defence counsel informed court that he will call all 4 accuseds to testify.
11. Niko Qaqara, the 2<sup>nd</sup> accused was the 1<sup>st</sup> defence witness. He said he saw DC/Inoke punching the 4<sup>th</sup> accused's left eye and Cpl/Elia slapping the 4<sup>th</sup>

accused from the back for more than once. After Inoke left the 4<sup>th</sup> accused to interview the 3<sup>rd</sup> accused, Qaqara said, Taufua and Elia kept on slapping the 4<sup>th</sup> accused and at one point the 4<sup>th</sup> accused went inside the table. Then Qaqara had been punched by Elia on ribs for more than five times when he was taken for the interview. Qaqara said that he agreed with what Elia told him and signed the book contained his statement as he was in pain. Further, he told that he was not given an opportunity to seek legal assistance.

12. In cross examination, Qaqara agreed that he is a good friend of the 4<sup>th</sup> accused and known each other for 19 years. Qaqara admitted that the punch to 4<sup>th</sup> accused by Inoke was a strong one, which resulted a swollen eye of him. He said that he was still with pains when he was produced before the Magistrate within 24 hours, though he did not tell it to the presiding Magistrate or requested court to send him to the hospital as he was not aware that he could do so since it was his first appearance in court.
13. Vilikesa Ramaqa, the 1<sup>st</sup> accused also said that Inoke punched the left eye of the 4<sup>th</sup> accused. Then Elia had slapped the 4<sup>th</sup> accused and with Taufua's punch the 4<sup>th</sup> accused had fallen on the floor whilst questioning. He had further seen Elia punching the ribs of the 2<sup>nd</sup> accused.
14. Whilst answering the prosecutor in cross examination, Vilikesa admitted that he knows the 2<sup>nd</sup> accused for 6 years and the 4<sup>th</sup> accused and him were brought up together in Tovata village. Vilikesa said that Taufua slapped the 4<sup>th</sup> accused's face and ribs. He denied the suggestion that he is telling all these things because 2<sup>nd</sup> and 4<sup>th</sup> accused are his close friends.
15. Moritikei Naicobocobo, the 4<sup>th</sup> accused testified next. He confirmed that he was punched to his left cheek by Inoke and Elia slapped to the back of his head for more than 5 times. Whilst interviewing, he said, both Elia and Taufua slapped him in his face and head. Once he had gone under the table as he could not take it anymore. He had signed the statement when the book was given even without reading the statement as he was scared. He said he was not given the right to get legal assistance or to talk to any relative or close friend.

16. During cross examination, Naicobocobo admitted that he received a very strong punch from Inoke where his left eye got swollen. Further, he said that he received slaps for more than 10 times from Taufa and his face was also swollen. He agreed with the prosecutor that though he requested Bail from the Magistrate saying that he has 6 months old baby, he did not tell the Magistrate about his injuries as he was not aware that he could do so. After calling the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> accused to the witness box, the learned defence counsel informed court that he is closing his case.
17. This *voire dire* inquiry only focuses on the 2<sup>nd</sup> accused and the 4<sup>th</sup> accused. They both claim that they were assaulted while they were taken to the Central Police Station for questioning on 21<sup>st</sup> of December 2010. Qaqara, the 2<sup>nd</sup> accused had received punches to his ribs by Cpl/Elia for more than 5 times and he was in pain even at the time he was produced before the Magistrate on 23<sup>rd</sup> of December 2010. Naicobocobo, the 4<sup>th</sup> accused testified in court to say that he was punched at his left cheek by DC/Inoke and slapped his face by both Cpl/Elia and DC/Taufa which resulted his left eye and face swollen. The two narrations were corroborated by Vilikesa, the 1<sup>st</sup> accused as well.
18. Whereas references were made to the Magistrate Court's record by both parties during the inquiry, this court thought fit to peruse the same. It reflects that the 1<sup>st</sup> accused had told court that "we want to engage Legal Aid". When the prosecution objected to bail, the four accused had made the following comments to the learned Magistrate:

**Accused 1:** *"I am attachment at Lautoka engineering (student) of Ratu Navula."*

**Accused 2:** *"I am schooling at TPAF – doing attachment at PWD Walu Bay. Want bail."*

**Accused 3:** *"I am looking after my family. No one at home to look after my parents."*

**Accused 4:** *"I have a 6 months old baby. No one to look after my daughter. Want bail."*

19. As suggested by the learned prosecutor, none of the accused, especially the 2<sup>nd</sup> and 4<sup>th</sup>, had not told their pain and grievances to court at the first available opportunity they could seek relief from an independent forum. A careful

consideration of the above statements clearly show that the learned Magistrate had given all 4 accuseds to inform court what they want. Neither the 2<sup>nd</sup> nor the 4<sup>th</sup> accused told court that they want bail to get treatments for their injuries. Had the two accused been subjected to forceful attack as described in court, they would have suffered a severe pain and the very first moment they heard that the prosecution is objecting to bail and they might not be able to go home to have 'some treatment' to their injuries, it is rather realistic and natural for them to inform the Magistrate, whether they had been to a court prior to that date or not, their burning grievances. Instead of telling that the two accused had told something totally alien to their 'assault'.

20. On the other hand, the learned Magistrate had not recorded about any injury that he observed on the face of the 4<sup>th</sup> accused. I am sure the learned Magistrate not only would have done so had he observed such a severe 'swollen' on the face of the accused, but might have referred the accused to the hospital for medical treatment as well. At the same time, there is no medical report before me to show that either of the two accused sought any medical treatment for the alleged injuries at any time after the learned Magistrate remanded them in custody. They could have sought treatments from the medical officer attached to the prison as well. Therefore, the absence of these factors discussed in paragraph 19 and 20, drive to the definite conclusion that the 2<sup>nd</sup> and 4<sup>th</sup> accused are not telling the truth.
  
21. The fact the accused uttering a lie does not relieve the prosecution from discharging their responsibility to show the alleged two confessionary statements were made voluntarily to the fullest satisfaction of this court. Having considered the evidence of the prosecution led before this court, I am fully satisfied that the prosecution proved beyond reasonable doubt that the police officers did not assault, threaten, induce or oppress both the accused to make their statements and thus, the two accuseds made their statements voluntarily. At the same time, I see no unfairness caused by the police officers to both the accused when making the said two statements.

22. As a final note, this court would like to emphasise that Judge's Rules are not the law but certain guidelines to ensure fair treatment to the suspects who are questioned by the police officers.
  
23. In the light of the above, I order the statements of the 2<sup>nd</sup> accused and the 4<sup>th</sup> accused are admissible in evidence and may be led in evidence, if the prosecution so wishes. The acceptance of the statements of the accused or otherwise, is a matter for the assessors.

Janaka Bandara  
**JUDGE**

**At Suva**

Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for all Accused