

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 005 of 2013

STATE

vs.

RAVINESH DEO AND ASHNEEL KAMAL

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

Hearing : 4th, 5th, 6th & 7th, 10th, & 11th March 2014

Closing Submission : 11th March 2014 (9.00am)

Summing Up : 11th March 2014 (1.00pm)

SUMMING UP

1. **ROLE OF THE JUDGE AND ASSESSORS.**

Madam Assessor and Gentlemen Assessors:

- (i) The learned Prosecutor, Ms. Low and the learned defence counsel, Mr. Maopa had concluded their duties in this trial by tendering evidence to support their respective cases and making their closing submissions. There will be no more

evidence or submissions in this trial. It is now my duty to sum up the case to you.

- (ii) You will be given the opportunity to retire for your deliberations after my summing up. Once, each of you, madam assessor and gentlemen assessors, reach to a conclusion on your final opinion, the court will re-convene and your individual opinion will be asked. You will not be asked to give reasons for your opinions at any time. The opinions of you three need not to be unanimous. Nevertheless, it would be desirable if you could agree on the final opinion. As the presiding judge of this case I am not bound by your opinions in delivering the final judgment of the court. Nevertheless, I assure you, that due weight and recognition will be given to your opinions when I deliver the final judgment.
- (iii) In my Summing Up I will direct you on the relevant areas of law which apply to this particular instance. You must accept that legal position and act upon that. In another words, you must apply the law as I direct you to the facts of this case. Facts, as you heard and saw in this court room, are entirely within your domain. You are the masters of the facts or judges of the facts of this case. It is entirely up to you madam assessor and gentlemen assessors to determine whether Mr. Ravinesh Deo, (herein after referred as the 1st accused) and Mr. Ashneel Kamal (herein after referred as the 2nd accused) committed the offence of "Arson" by setting fire to the Westpac Bank branch in Labasa.
- (iv) In reaching to your final opinion, you have to rely on the evidence you saw and heard, from the witness box and the documentary evidence tendered in court, which includes the CCTV footages as well, and nothing else. You should simply disregard what you saw or heard from the printed or electronic media regarding this case or any related incidents before or during the trial. At the same time, any views or opinions expressed by your friends, family members, relatives or anybody should face the same fate. It is you who have to draw your own conclusions based on the evidence in this case.
- (v) The learned counsel for the prosecution and the defence, when making their closing submissions highlighted certain facts and tried to formulate their opinions according to their case theories. You need not to accept those versions

unless you agree with their contentions. Same principle applies to me as well. If I express any opinion or appear to do so regarding any of the facts, do not follow it, simply because it came from the Judge. It is solely your task to form your own opinions. In my summing up I might not touch all the areas or evidence which you think to be important. Please feel free to give due consideration to all the evidence you see fit, though I mention it or not.

- (vi) You have to decide the credibility and truthfulness of each and every witness. In doing so, you can rely on not only what you heard, but what you saw as well. The way witnesses offered evidence from the witness box, how they face the cross examination, were they firm on their stand or evasive, can be helpful in determining their demeanor and in turn to judge their credibility as well. In furtherance to assessing the trustworthiness of the witnesses, in this instance, you have to pay a considerable amount of attention to the set of documents tendered to the court by the parties as well. This is a case basically depended on documents such as the two caution interview statements and the two charge statements of the two accused. Apart from assessing the truthfulness and the credibility of the witnesses, you are supposed to follow the same procedure in respect of the documents as well.
- (vii) I would like to emphasis that madam assessor and gentlemen assessors, you were chosen to be the judges of facts of this trial as you represent a cross section of the pulse of the society. Your common sense and the experience in day to day life must come into operation when you deliberate this case. That common sense and the life experience have to be utilized in deciding or assessing the credibility or honesty of witnesses and truthfulness of their evidence. In that task, you have the liberty to accept the whole version of a testimony of a witness or a portion of that testimony and reject the rest. You can refuse to accept even the whole testimony of a witness.
- (viii) I must inform you that you must not be prejudiced or sympathetic towards anybody or any party involved in this case. You saw the photographs which provided you a rough idea of the damage caused to the bank premises. Prosecution alleges that the loss of this fire is over FJD 1million. This back ground does not warrant for you to be sympathetic or over emotional towards

the complainant bank and be harsh on the accused. Your final opinion should not be tainted with passion towards anybody. Anyway, remind yourselves the oath that you administered at the commencement of this process, “give your true opinion without fear, favour or ill will in accordance with the evidence and law”.

2. THE BURDEN OF PROOF

- (i) When approaching the matter in hand, you madam assessor and gentlemen assessors, I would like to draw your attention to certain basic rules which govern our criminal justice system. The accused are presumed to be innocent, though they are charged before this court with one count of ‘Arson’, until they are found guilty by this court. Proving their guilt is the sole burden of the prosecution, as it was the prosecution, who accuses the accused of committing the offence of “Arson”. The duty of the prosecution to prove the case against the accused continues throughout the trial and it never shifts to the accused. The law does not impose any obligation or duty upon the accused to prove their innocence or otherwise.

- (ii) When proving the case against the accused, the law expects the prosecution to prove it beyond reasonable doubt. That means the prosecution must prove the case for you to be ‘sure’ of the guilt of the accused and nothing else will discharge their burden. There is no specific formula where you can have a mathematical precision to be ‘sure’. It is all about your day to day experiences and common sense come into play once again. The ultimatum is that you, madam assessor and gentlemen assessors, must be ‘sure’ of the guilt of the accused based on the presented evidence in court by the prosecution. If you have a ‘reasonable doubt’ over the guilt of the accused the benefit of such doubt should immediately be awarded to the accused. Such a doubt, as stated, should definitely be a ‘reasonable doubt’. A mere possible doubt or trivial and imaginary doubts will not create a reasonable doubt. It should be an actual or substantial doubt which shakes the foundation of the case of the prosecution. The doubts should stem out of the evidence what you saw and heard in court.

3. LAW

(i) Now you know that there are two accused who are facing one charge of “Arson”. When the prosecution discharges their burden of proving the allegation beyond reasonable doubt, they have to present evidence separately against both the accused to prove the allegation against each accused. Therefore you have to consider the case against each accused separately. The evidence against each accused is different and your opinion must be based on the available evidence for each accused.

(ii) Madam assessor and gentlemen assessors;

You are well aware by now that it is alleged by the prosecution that both the accused did make confessions to the police whilst they were in the police custody, implicating them to the offence charged.

(iii) The prosecution says those confessions were made voluntarily by the accused and therefore, you may rely on those. In contrary, both the accused say that they were assaulted, forced, induced and the police officer used their authority to obtain the said ‘confessions’. It is the duty of the prosecution to prove beyond reasonable doubt that the alleged two caution interview statements and charge statements of the two accused made voluntarily to the police. A ‘confession’ to a person in authority, like the police officers in this instance, is a strong piece of evidence against its author or maker. But, you have to be satisfied on two things before you proceed to accept it. First, you must be sure that the ‘confession’ was made freely and voluntarily in its makers own free will, but not as a result of threats, assaults, promises or inducements made to him. Secondly, you have to decide that the contents of the confessions are truthful or not. If you are sure that the confessions were made voluntarily and the contents of it are true, you can rely on those confessions when considering your opinions. If the confessions do not meet the two fold requirements to your fullest satisfaction, you are entitled to disregard them.

(iv) There is another directive that I have to give you on the above discussed issue of confessions. A ‘confession,’ if you are ready to accept as evidence after meeting the two tests stated above, can be considered only against its maker. Whatever the implications or references to the co-accused should be disregarded when considering the co-accused’s case. For instance, if the 1st accused had implicated the 2nd accused in his confession, you cannot take that implication into account when you consider the 2nd accused’s case.

- (v) You would recall that two doctors offered evidence during the trial. Being experts of their field, they are entitled to formulate their opinions in the field of medicine. The defense submitted that Doctor Krishna possesses only an experience of 5 years at the time of the examination of the 2nd accused and that is comparatively low when considered Doctor Farrales. But, it is you who have to decide whether you are going to accept or not those opinions formulated by the two medical personalities.
- (vi) Finally, I direct you as a matter of law that when two or more persons get together after forming a common intention to commit an unlawful act in conjunction with one another, and when an offence is committed as a probable result of such unlawful act each of them are deemed to have committed the offence in the same manner as if it were done by him alone. Here, in this instance, the prosecution says that the two accused shared a common intention and acted in joint enterprise to set fire to the bank. It is your task to decide whether or not the claim of the prosecution is been supported by their evidence.

4. THE INFORMATION

- (i) The accused are been charged by the Director of Public Prosecutions on the following count.

Statement of Offence

ARSON: Contrary to Section 362 (a) of the Crimes Decree No. 44 of 2009

Particulars of Offence

RAVINESH DEO AND ASHNEEL KAMAL between the 11th day of December 2012 and the 12th day of December 2012 at Labasa in the Northern Division willfully and unlawfully set fire to the Westpac Bank Corporation Labasa Branch Office.

5. ELEMENTS OF THE OFFENCE

- (i) The Charge of "Arson" under section 361 of the Crimes Decree No. 44 of 2009 contains the following elements.

- The accused,
- willfully and unlawfully set fire,
- to a building or structure.

6. **AGREED FACTS**

Both the prosecution and the defense have agreed upon following facts. Thus, the prosecution is relieved of proving those facts by leading evidence once again. You madam assessor and gentlemen assessors, can positively assume that the prosecution has proven these facts beyond reasonable doubt.

- (i) **It is agreed that Westpac Banking Corporation (Labasa Branch)** having a licence conferred upon it on 02nd April 1984 by the Reserve Bank of Fiji to operate as a bank in Fiji is hereinafter known as the **Complainant**.
- (ii) **It is agreed that Mr. Ravinesh Deo** 30 years of age (2012) of Korowiri Tovata Labasa farmer is hereinafter known as **Accused 1**.
- (iii) **It is agreed that Mr. Ashneel Kamal** 27 years of age (2012) of Korowiri Tovata Labasa Fisherman is hereinafter known as **Accused 2**.
- (iv) **It is agreed that** between the 11th of December 2012 and 12th of December 2012, the Complainant Bank located in Main Street Labasa was burnt.
- (v) **It is agreed that** between the 11th of December 2012 and 12th of December 2012, both Accused 1 and Accused 2 were in Labasa Town.
- (vi) **It is agreed that** after the Complainant Bank was burnt as per paragraph 5 supra, Accused 1 and Acused 2 were arrested by the Police and taken to the Labasa Police Station.
- (vii) **It is agreed that** Accused 1 was interviewed under caution at the Labasa Police Station on 31/12/2012 and 01/01/2013.

- (viii) **It is agreed that** Accused 2 was interviewed under caution at the Labasa Police Station on 31/12/2012, 01/01/2013 and 04/01/2013.
- (ix) **It is agreed that** Accused 2 was formally charged at the Labasa Police Station on 05/01/2013.
- (x) **It is agreed that** Accused 1 was medically examined at Labasa Hospital on 02/01/13 and a medical report was obtained on his behalf.
- (xi) **It is agreed that** Accused 2 was medically examined at Labasa Hospital on 08/01/13 and a medical report was obtained on his behalf.
- (xii) **It is agreed that** the admissibility of the following documents are not in dispute between the Prosecution and Defence/Accused person and will be tendered in Court by consent as prosecution evidence.
 - a) **A copy of the Licence for Westpac Banking Corporation to operate as a bank.**
 - b) **National Fire Authority Report on the Complainant Bank on this alleged incident.**
- (xiii) The following issues have been identified by the parties as to be determined at the end of the trial.
 - a) Whether Accused 1 & Accused 2 were subjected to inhumane treatment and assault and threats whilst being held in police custody?
 - b) Whether the admission/confession by Accused 1 & Accused 2 were made voluntary and give on their own free will or was it a result of force, threats and assault?
 - c) Whether the Accused 1 & Accused 2 set fire to Westpac Bank between 11th December 2012 and 12th December 2012.

7. THE CASE OF THE PROSECUTION

- (i) Mr. Matayasi Daveta, the Manager of Westpac Bank, Labasa Branch was the first prosecution witness. He had received a call from ADT Security Services between 10 – 12pm on 11th of December 2012 saying that the bank is on fire. When he reached the bank, he had seen the flames and fire fighters in action. When he went inside the bank on the following morning he had noticed a great deal of damage to the building and equipments. Mr. Daveta, on a later date, had handed over a copy of the CCTV footages to the police. During the down-loading of the footages, he had seen ‘two boys’ climbing the back gate of the bank and jumping back from the roof to the ground. The estimated damage from this fire, the witness said, is \$1.057 million and he tendered a document to that effect marked as Prosecution Exhibit No. 01.
- (ii) Ms. Kalara Tuidraki, a bank officer of Westpac- Labasa Branch testified to the effect that she was the last person to leave the bank premises around 9.00pm on 11th December 2012 after making sure that all the doors are properly locked.
- (iii) Police Constable 4840 Tomasi tendered 16 photographs of the scene of crime marked as Prosecution Exhibit No. 02. He described all the places and views that these photographs captured.
- (iv) Prosecution witness No. 04 was Corporal 2535 Vidya Pillay. When he was in night patrol duty on 30th December 2012 in Labasa town, with Police Constable Vikash, he had received a call from the commanding centre to meet an informant who is ready to provide some information about the ‘Westpac’ fire. Upon meeting the ‘informant’ and getting the ‘information’, both the officers had proceeded to the town and located the ‘two boys’ as narrated by the ‘informant’. The two boys were said to be inside the ‘Pontoon Night Club’. The officers had waited until they come out.
- (v) Then the ‘boys’ had gone to ‘Royale Diner Hotel’. Corporal Pillay along with Police Constable Vikash had waited outside to arrest the ‘boys’ in case they come out of the hotel. Corporal Pillay had knock off from his duties at 7.30am on 31st December 2012 when other officers came to the hotel site to relieve him. This witness tendered his ‘Note Book’ marked as Prosecution Exhibit No. 03 and read certain portions relevant to his movements during the night in issue.

- (vi) Police Constable 3270 Vikash Chand was called next. He basically repeated what Corporal Pillay said about receiving the information, locating the 'two boys' and following them to 'Royale Diner Hotel'. Police Constable Vikash had joined Sergeant Mani at about 8.30am on 31st December 2012. He had gone to Room No. 104 of the hotel with Sergeant Mani and others. Police Constable Vikash said that the 'two boys' were 'fully sleep' and 'drunk'. Police Constable Vikash claimed that he asked for the 'Black bag' from the 1st accused, but he denied. Then Sergeant Mani had showed the 'search warrant' to the boys and found the 'black bag' kept under 1st accused's bed. Sergeant Mani had opened it and told that some house breaking instruments are inside. The boys had been brought to Labasa police along with the 'black bag' upon their arrest. Police Constable Vikash tendered his 'Note Book', which contains the relevant recordings on the date in issue, as Prosecution Exhibit No. 04.
- (vii) Detective Corporal 2925 Prabin Lal was the Interviewing Officer of Avinesh Deo, the 1st accused. Sergeant 2480 Virendra Nandan had witnessed this cautioned interview. Detective Corporal Lal had noticed a small bruise on the lower lip of the accused before he commenced the interview. Witness said that he gave all the rights, such as to consult a lawyer of his choice or a Legal Aid Lawyer, talk to a family member or anybody, to the accused before he started the interview. He said that the accused refused to consult anyone at that time. Detective Corporal Lal said that breaks were given after every 01 hour enabling the accused to rest. Detective Corporal Lal stressed that he did not assault, threat, force, induce or made promises, before or during the interview. He tendered the caution interview statement of the 1st accused as Prosecution Exhibit No. 05. (The original Hindustani one is 5A and English translation is 5B).
- (viii) Detective Sergeant 2480 Virendra Nandan was the witnessing officer of the caution interview of the 1st accused. Whilst confirming the narration of Detective Corporal Lal over the events took place during the interviewing process, he said the accused was in a good mood and did not make any complaints.
- (ix) Detective Constable 3506 Asish Kumar had charged the 1st accused. He said the suspect looked normal and he noticed a small bruise on the suspect's lower lip. Detective Corporal Asish told court that he offered all the rights to the suspect before charging him, though he did not utilize those options. Witness said that he did not assault or force or induce or make promises to the suspect when

charging. The original of the charge statement was tendered to court marked as Prosecution Exhibit No. 06A and its English translation as 06B.

- (x) Women Detective Corporal 2440, Faridan Bi was the ninth prosecution witness. She had witnessed the charging process of Ravinesh Deo. She said that the accused did not complain of anything and she noticed a bruise on his face. She assured that all the rights were given to the accused before charging and he was never forced or threatened or induced by anybody during the whole process.
- (xi) Detective Constable 3651 Vimal Sharma had interviewed Ashneel Kamal, the 2nd accused under caution. The interview had commenced on 31st December 2012 and continued on 01st January 2013 as well. He said the suspect 'looked fine' and before recording the interview in Hindustani language, he was given all his legal rights to consult a lawyer of his choice or a Legal Aid Counsel, family member or relative or anybody. He further said that breaks were given to the suspect to rest and have lunch and dinner. Ashneel Kamal had been released during this interview on 01st January 2013 as there was no sufficient evidence against him.
- (xii) The continuation of the caution interview had commenced on 04th January 2013 after the re-arrest of Ashneel Kamal. Detective Constable Vimal said that after the re-arrest, the 2nd accused was shown the video footages, which were taken from the CCTV camera fixed at the Westpac bank premises. Then, the witness said, the suspect admitted that he committed the offence. The witness showed three video footages to court and said that the 2nd accused admitted that the 'black and white' shoes reflected in the scene belong to him and he wants to tell the truth. Detective Constable Vimal told court that no force or threat or inducement or promise made to the accused before or during the interview.
- (xiii) Detective Constable Vimal tendered the original caution interview in Hindustani language to court marked as Prosecution Exhibit No. 07A and its hand written English translation and its typed version as Exhibit No. 07B and 07C. Witness identified a pair of black and white 'Puma' shoes and some clothes and alleged that those belong to the 2nd accused.
- (xiv) Detective Corporal 2794, Sanjeet Lal was the Charging Officer of the 2nd accused. Detective Corporal Lal claimed that the suspect looked 'normal' before the charge took place and made no complaints. The suspect had been given all his rights including his right to remain silent. Witness tendered the original charge notes in

Hindustani language as Prosecution Exhibit No. 08A and its English translation as 08B.

- (xv) Detective Corporal 3505, Vinesh Prasad had witnessed the charging process of the 2nd accused. Since the learned defense counsel informed court that he has no questions to put to this witness, he tendered the statement made to police marked as Prosecution Exhibit No. 09.
- (xvi) The 13th witness for the prosecution was Acting Corporal 3504, Ashwin Nand. He confirmed that the 2nd accused was brought to Delailabasa Police Post on 31st December 2012 around 10.15am by Sergeant Mani. He had noted nil injuries on the suspect. Witness had made notes in respect of this movement in the Station Diary (Serial No. 14), as being the Orderly of the police post on that day; it was his duty to do so. He told court that Sergeant Mani told him that the suspect will be kept in Delailabasa post as the other suspect of the 'arson case' is in Labasa Police Station. Then Sergeant Mani had left the post. Acting Corporal Ashwin had made several notes in his Note Book regarding the status of the 2nd accused till 2.15pm. He said that after 2.15pm, he had to go to Labasa Police Station to check on some other inquiries. The Station Diary and his Note Book were tendered to court marked as Prosecution Exhibit No. 10A and 10B.
- (xvii) Detective Constable 3490 Francis Aisea tendered Serial No. 188 of the Station Diary marked as Prosecution Exhibit No. 11A and said that he escorted Ashneel Kamal, the 2nd accused to the Crime Office from the Charge Room for the caution interview on 31st of December 2012 around 4.40pm.
- (xviii) Prosecution Witness 15 was Acting Inspector Ajesh Mani. He had arrested the two accused at Royale Diner Hotel on 31st December 2012 whilst they were occupying room no. 104. The information to obtain Search Warrant and the Search Warrant to search the said hotel room was tendered to court marked as Prosecution Exhibit No. 12A and 12B. He said the receptionist assisted the police team in opening the room door and when they walked in, both the accused were fast asleep. Inspector Mani said that he offered all the rights to the accused before they were arrested. He claimed that both were heavily smelt of liquor and staggering on their feet. He had further noted that the 1st accused had a bruise on his lip and the 2nd accused did not have any injury. Upon searching the room, the witness said that he found a black bag kept under 1st accused's bed which

contained a black gallon of benzene, pom-poms, gloves, a box of matches, a spanner, a tin cutter, a white gallon, mosquito coils and some other things.

- (xix) Inspector Mani had brought the two accused to the station at 8.47am on 31st of December 2012. Serial No. 54 of the Station Diary which denotes this was marked as Prosecution Exhibit 11B. Witness tendered a black bag along with a piece of a mosquito net, a piece of cloth, some matches, mosquito coils, a tin cutter, a shifter, 2 pairs of gloves and two masks, marked as Prosecution Exhibit No. 13. The information to obtain a Search Warrant to search Ms. Shri Wati's house (1st accused's house), the Search Warrant and the search list containing all the items uplifted from her house were tendered to court marked as Prosecution Exhibit No. 14A, 14B, and 14C. The items taken into custody from Ms. Shri Wati's house, a piece of mosquito net, coils, a 'home made bomb' with several matches tied together were marked as Prosecution Exhibit No. 15. Inspector Mani said that all these items were entered to RCE/186/13. He further said that he noted some similarities in the piece of mosquito net found inside the black bag and the piece given by 1st accused's mother from her house.
- (xx) Then Inspector Mani said that he accompanied the 2nd accused to Delailabasa Police Post as they did not want the accused to converse with each other, had they both been kept in the Labasa Police Station. He had escorted the 2nd accused back to Labasa after 3.00pm. He confirmed witnessing the caution interview of the 2nd accused. Inspector Mani repeated what Detective Constable Vimal said about the caution interview process and stressed that no harm or injury or threat or inducement or promise made to the accused when they were in the police custody.
- (xxi) Finally, Inspector Mani said that the 2nd accused admitted the commission of the offence when he was shown the video footages after re-arresting him on 04th January 2013. He further said that the 2nd accused volunteered to give the cloths that he was wearing on 11th December 2012 and 30th December 2012. The information to obtain a Search Warrant to search 2nd accused's house and the Search Warrant were tendered to court marked as Prosecution Exhibit No. 16 A and 16B. The entry of the cell book which denotes the production of the 2nd accused on 04th January 2013 after the re-arrest (09/12) was tendered to court marked as Prosecution Exhibit No. 17.

- (xxii) Doctor Krishneel Krishna who was attached to Labasa Hospital in January 2013 had examined Ashneel Kamal on 08th January 2013. He tendered the medical report he prepared after examining the patient Kamal marked as Prosecution Exhibit No. 18. The patient had told him that he was assaulted by police officers on 31/12/2012 and 04/01/2013. The patient narrated history says that he was kicked in the stomach in safety boots, stepped on the left knee, right hand, punched on the back of the head, kicked on both thighs and back on 31st December 2012 and was kicked on the back of the right knee, back and slapped on the face on 04th January 2013.. The doctor said that he did not observe any scars, bruises, or discoloration of skin or any physical injury on the patient's body to support the claim of the patient. His conclusion was "it is difficult to comment on age of injuries as it has been more than one week of the date of the incident and there is no obvious injuries evident now".
- (xxiii) Doctor Roy B. Farrales had examined Ravinesh Deo, the 1st accused on 02nd January 2013. The history narrated to the doctor by the patient was that he was 'punched by a Fijian police officer at Royale Hotel, Labasa at 9.00am Sunday (30/12/12). The doctor had observed an infected bruise on lower left lip and slight tenderness on the left side of the face, lower jaw, right lower chest, and anterior part of both left and right thighs. He had concluded that the bruise and tenderness of muscles could be due to a blunt trauma and one week old. Dr. Farrales tendered the medical report to court marked as Prosecution Exhibit No. 19.
- (xxiv) The last and the 18th witness for the prosecution was Sergeant 224 Beniamine Rokoua. He was the Investigating Officer in this matter. He tendered the licence of the Westpac Bank to operate the financial transactions marked as Exhibit No. 20. He said some pieces of roofing iron and an empty gallon were uplifted from the scene of crime and the gallon had been sent to the Analyst for further examination. He tendered 49th – 53rd lines of his statement, which refer to the gallon sending to the Analyst, marked as Exhibit No. 21. The Fire Report of the Fiji National Fire Authority was tendered to court marked as Exhibit No. 22.
- (xxv) Sergeant Beniamine tendered the Information to obtain a Search Warrant to search Hotel North Pole marked as Exhibit No. 23A and the search list prepared marked as Exhibit No. 23B. He explained that he made a mistake by stating 'North Pole Hotel' instead of 'Royale Diner' in the Search Warrant. The witness confirmed that he observed a 'bruise' on the lip of the 1st accused when he saw him first on 31st December 2012. As the accused did not answer the verbal

interrogation as soon as they were brought to the station, the witness said, that the 1st accused was taken to the cell block by him for him to rest a while. The Cell Book entry No. 640/12 dated 31st December 2012 at 8.55am was tendered to court marked as Prosecution Exhibit No. 24.

- (xxvi) Sergeant Beniamie said that they received the CCTV footages from the bank authorities on 04th of January 2013 and the 2nd accused was re-arrested after viewing those footages. He said that the 2nd accused 'looked well and very co-operative' when he was brought on 04th January and they cautioned him before showing the video footages. According to Sergeant Beniamie, after seeing the video footages, the 2nd accused identified him as the one standing closer to the gate and admitted his responsibility to the allegation. He reiterated that no force or harm or threat or offer or inducement made to the 2nd accused during the process. Finally, Sergeant Beniamie tendered the CD which contained the CCTV footages to court marked as Prosecution Exhibit No. 25.

8. THE DEFENCE CASE

- (i) At the end of the prosecution case, court decided to call for the defence from the accused. The learned defence counsel informed court that both the accused are ready to come to the witness box and they would not call any other witness. Mr. Ravinesh Deo, the 1st accused took the stand first. Mr. Deo claimed himself as a carpenter for the last 02 years. On 11th of December 2012, he said that he was at home throughout the day and especially, from 8pm to the early hours of 12th December 2012, he did not move out of the house. He said he does not know why he was arrested on 31st December 2012, when he was in Royale Diner Hotel with Mr. Ashneel Kamal.
- (ii) Recalling the events on 30th December 2012, Mr. Deo said that they were drinking beer at Royale Diner Hotel and went to North Pole Hotel and to 'Fusion' night club and then came back to Royale Diner Hotel. On 31st December 2012 morning, Mr. Deo said that he heard somebody knocking the door while they were sleeping and he went and opened the door. Then, he said several police officers including Mani and Aisea came inside the room and started punching and kicking to his face, ribs, chest and the back of his body. They had assaulted the 2nd accused as well. Mr. Deo had fallen on the ground as a result of the said assault. From the hotel room, he had been taken to Labasa police station, while the 2nd accused was still in the hotel room.

- (iii) Mr. Deo said that he was assaulted again at the 2nd floor by 5 – 6 police officers with kicks and punches to his chest, ribs and the nose while been hand cuffed. He said Ashneel was brought to the station while he was sitting on the floor, after this assault. Talking about the 'black bag', Mr. Deo said that it was on a table when he was taken to the 2nd floor of the station and the officer asked him whether it belongs to him or not. He had told 'no'. The police officers had assaulted him while showing the items inside the black bag. Mr. Deo said that one police officer was writing 'something' while talking to him for about 1 hour and at last he signed those papers. He said he does not know what 'interview' is and he did not know that he was been interviewed at that time.
- (iv) He claimed that his bruise was paining with some chest pains and though he told it to Sergeant Mani and other police officers they did not take him to the hospital. Mr. Deo stressed that even on 01st January 2013, he told the police officers that he did not set fire to the bank and the officers assaulted to his chest area. Referring to the 'reconstruction' of the scene, Mr. Deo said that he was assaulted again by the officers when he refused to climb to the bank roof, and in fact, officers showed him how to do so. He confirmed telling to his interviewing officer at the roof top of the bank that he did not set fire. One officer had assaulted Mr. Deo at that place as well. He denied making any statement during the charging process. Finally, he said that he informed the Magistrate about his injuries when he was first produced before court and he was referred for medical examination by the court. Mr. Deo firmly said that he did not set fire to Westpac and all in the statements are a lie.
- (v) Mr. Ashneel Kamal offered evidence next. He said that he was assaulted by slapping at the Royale Diner Hotel by Sergeant Mani on 31st December 2012, upon their arrest. Police Officer Vikash had kicked him on the way to Labasa Police Station. Mr. Kamal had seen the 1st accused with hand cuffs and bleeding lips, when he was taken to the Crime Office. Mr. Kamal had been assaulted at the Crime Office as well by kicking him to the back of his thighs. He said that the police officers forced him to tell that the 'black bag' belongs to the 1st accused. Upon agreeing to that, Mr. Kamal had been taken to where the 1st accused was kept. He had seen the 1st accused in pain around his 'ribs area'. Sergeant Mani had been slapping the 1st accused even at that time. Then Mr. Kamal had been taken to another room and assaulted with kicks and slaps by Sergeant Mani, Aisea and Vimal. He had fallen on the ground with the kicks.

- (vi) Then he had been taken to Delailabasa Police Post by Sergeant Mani and Aisea. Sergeant Mani had assaulted Mr. Kamal at the Police Post and then left. Mr. Kamal said that one hand cuff was locked to a leg of a table while he was in Delailabasa Post. When Sergeant Mani and the team escorted him back to Labasa Police Station, Mr. Kamal said that Sergeant Mani promised to release him, give him money and look for a permanent job if he says that 1st accused's injury was due to a fight which took place at Pontoon night club. Mr. Kamal claimed that he did not know what they wrote and simply signed in the papers that the police officers gave him.
- (vii) Mr. Kamal said that he was released on the following day and Sergeant Mani dropped him at home. But, he had to come again to sign the statement which was tendered to court marked as Defense Exhibit No. 02. Mr. Kamal denied the contents in the said document. Referring to his 2nd arrest, Mr. Kamal said that he was again assaulted with slaps and pushes by Mani. The police officers had twisted his ears. He had taken out of the police station to go to Korowiri, Y junction and at last to Westpac Bank with the hand cuffs. He had climbed the back gate of the bank to reach the roof top as ordered by the police officers. He had got a cut on his palm over a roofing iron.
- (viii) The video footage had been shown to Mr. Kamal as well. He said that he did not recognize anybody in that. He refused him telling police officers that one out of the 'two figures' is him. The police officers had gone to his house and picked clothes of him, while he was in the police van. Mr. Kamal said that one of two trousers produced in court belongs to his father. He denied making any statement when he was charged. Mr. Kamal said that he told the Magistrate about his 'cut' on the palm when he was produced before court. He confirmed that he got his medical examination done at Labasa hospital and told the doctor what happened to him. Mr. Kamal totally denied the allegation of setting fire to the bank premises and making confessionary statements to the police during the caution interview and charging process.

9. ANALYSIS

- (i) Madam assessor and gentlemen assessors,

I have summarized you the evidence of both sides, as you heard and saw for several days. I saw you taking down notes when the evidence was offered from the witness box. So, I have no doubt that you are still fresh with your memories of what took place within the four corners of the court room and therefore I do not wish to analyze the evidence to a greater extent. The fact that there was a fire which caused a damage of over FJD 1 Million to the Labasa branch of the Westpac Bank is not in dispute. The issue to be determined here is whether the two accused willingly and unlawfully set fire to the bank or not. Paragraph # 05 of the Agreed Facts says that the two accused were in Labasa town between the 11th and 12th of December 2012. But, the 1st accused did tell in his evidence that he was at home during the material time. The 2nd accused could not recall where he was on that day.

- (ii) Now you know that the only available evidence against the two accused is their caution interview statements and charge statements. There is no direct or circumstantial evidence against them. I have already directed you as a matter of law, that if you are sure that the two accused made those statements voluntarily to the police officers and the contents of those statements are to be true, you can use the said statements against the two accused without any problem. Now it is left to you to decide which side of the story you are going to accept and believe.
- (iii) The prosecution says that they have proved it beyond reasonable doubt or for you to be sure that the two accused made 'confessions' voluntarily, without any force, threat, inducement or promise. To support their version, the prosecution heavily relies on the two medical reports tendered to court marked as Exhibit No. 18 and 19. Prosecution Exhibit No. 18, the medical report prepared by Doctor Krishneel Kishna after examining the 2nd accused, says;

D (11) Initial Impression

"Nil obvious distress noted"

D (12) Specific Medical Findings

"(a) There is no obvious discoloration/swelling on the face or neck.

- (b) There is no obvious long deformities on the x-ray of the right forearm.
- (c) There is no discoloration or swelling on the right and left thighs
- (d) There is no discoloration or swelling noted on the hand.
- (e) There is no obvious swelling/deformities seen on right forearm.
- (f) There is no obvious swelling/deformities seen on left knee.

D (14) – Professional Opinion

“It is difficult to comment on age of injuries as it has been more than one week of the date of the incident and there is no obvious injuries evident now”.

The learned prosecutor highlighted that these observations and findings were recorded after the 2nd accused narrated the following ‘history’ to Dr. Krishna.

“Victim was allegedly assaulted on 31st December 2012. Kicked in the stomach in safety boot, stepped on left knee, right hand, punched on the back of the head, kicked on both thighs and back. He was also allegedly assaulted on 04th January.

He was kicked on the back of the right knee, back and slapped on the face.”

Therefore, it was argued by the learned prosecutor, that the allegation leveled by the 2nd accused against the police officer is a fabrication as had it been true, the doctor should have noticed a patient who was in much more severe condition. She said that not only the doctor had observed nil injuries, but the much highlighted cut injury on 2nd accused’s palm was also not to be in existence. The learned prosecutor stressed that the discharge of the 2nd accused on 01st January 2013, due to lack of evidence, shows the fairness of the way that the police performed their duties.

Referring to Prosecution Exhibit No. 19, the learned prosecutor said that the history narrated to Doctor Farrales by the 1st accused on 02nd January 2013 is totally different from what he said in court.

“He was allegedly punched by a Fijian police officer at Royale Hotel, Labasa at 9.00am Sunday (30/12/12)”.

It was highlighted by the prosecution that all what Dr. Farrales had observed in the 1st accused is a bruise and ‘slight tenderness’ in certain parts of the body. The doctor in his evidence, admitted that a ‘tenderness’ means a ‘response by the patient to a touch’. The doctor agreed with the learned prosecutor that the patient can pretend that he is in pain to a touch, though it is not the truth. Further, he admitted that he could have observed ‘remarks’ on the body of the 1st accused had he been kicked and punched and slapped by several police officers, especially who were wearing the safety boots, for number of times. Commenting on the ‘lip injury’, the doctor said that it looked like ‘swollen’ from outside and it was ‘yellowish’ only from inside. He said there could be other reasons such as hitting the lip on a table or floor or even self inflicted, instead of an ‘assault’. Having considered the ‘yellowish’ color, the doctor said it could be 07-10 days old injury. When confronted with the doctor’s evidence, the 1st accused said that even his nose was bleeding and the doctor did not write down the injuries that he showed to him. The learned prosecutor argued that the 1st accused is lying to court about his injuries as the bruise on the lip would have caused from something else and he deceived the doctor by pretending to be painful when touching certain parts of his body.

- (iv) Her contention was that the police officers never assaulted the 1st accused, but treated him humanly by giving him a good rest of over 5 hours before recording the caution interview and offering him all the legal rights. The prosecution highlighted that Mr. Deo’s interviewing officer had even recorded that Mr. Deo told him at the roof top of the bank during the reconstruction of the crime scene that neither he had cut the bank roof nor he had set the fire to the bank and that itself is evident of the fair manner the investigation was conducted. This caution interview notes to that effect is as follows;

1542hrs: ‘At the roof of the Westpac bank the suspect then told me that he had not burned the Westpac bank neither he had cut the roof of the building.’

Q295: Since you have shown me all the places from where you have climbed the roof of the Westpac bank and upon climbing the roof of the Westpac bank you have told me that you have not set the fire to the Westpac bank. Can you tell me that have you set fire to the bank or no?

A295: Yes I had set the fire to the bank.

Q296: Why then upon climbing the roof of the Westpac bank with the police you have told the police that you had not set fire to the Westpac bank?

A296: When I climbed the roof of the bank again, I was frustrated and afraid and I lied to the police that I have not set the fire to the Westpac bank.

Q297: Why were you afraid?

A297: Because I saw the same place where I had cut the tin and set the fire again I got frightened.

Q298: Is this true that you had cut the roof top of Westpac bank and set fire to it?

A298: Yes.

Citing the above, the prosecution argued that the police officers had done their maximum to conduct the interviews fairly, without any violence and they could have easily avoided recording this, if they really wanted to do so.

(v) The crux of the prosecution argument is that you should accept the voluntariness and truthfulness of the contents of the caution interviews and charge statements of the two accused. Now you have to deliberate the prosecution evidence and assess the weight that you are going to attach to that.

(vi) The story of the defense is totally different. The 1st accused avers that he was continuously assaulted by the police officers from the point of arrest at Royal Diner Hotel until he was charged on 01st of January 2013. The assaults vary from slaps, kicks and punches to his face, ribs, chest, thighs and back of the body.

Apart from the 'bruise' on his left lower lip, he claims that even he had a bleeding nose and fell on the floor for two times as a result of the said assaults by the police officers.

- (vii) Mr. Deo maintained the position throughout his evidence that he told the police Officers that he did not set fire to the bank and even the 'black bag' containing several 'items' did not belong to him. He said the pieces of mosquito nets alleged to have found inside the 'black bag' and from his house are different from each other. He confirmed telling the interviewing officer at the roof top of the bank that he did not set fire. Mr. Deo claimed that he simply signed the papers given to him by the police officers without reading what was written in those papers. The suggestion of the learned prosecutor that certain things stated in the caution interview like that Mr. Deo had to pay the debts for his mother's land are exclusively known to him, Mr. Deo said that the police wrote things by their own and forced him to sign.

- (viii) Referring to the statement alleged to have made by him during the charging that "the fire which I set in the Westpac Bank is a really biggest mistake I did and I ask forgiveness for that and assure not to do such things again," Mr. Deo said that he never made such a statement. His contention is that he was assaulted, threatened, forced and induced to sign the caution interview statement and the charge statement. Therefore Mr. Deo says he did not admit the charge or allegation of setting fire to Westpac bank and the contents of the statements are not true. You madam assessor and gentlemen assessors, now have to assess the version of the 1st accused separately, as I have directed you earlier, to see whether it appeals to your common sense or not.

- (ix) Mr. Ashneel Kamal, the 2nd accused also claims that he was assaulted by the police officers by kicks and slaps to his face and thighs, for almost 7 - 8 different times. Apart from the assaults, Mr. Kamal claimed that Sergeant Mani offered him a good job and payments if he implicates the 1st accused to the Westpac fire. He maintained from the very beginning that he always denied the allegation leveled against him and never made the statement "I have made a mistake and will never repeat this again" during charging. His position is that the police officers wrote whatever they want and given the paper for him to sign.

- (x) Referring to the injury free medical report, Mr. Kamal said that he had injuries and he showed it to the doctor as well. The learned prosecutor asked whether the cut injury on the palm got disappeared when doctor examined him. Mr. Kamal said he showed that injury to the Magistrate as well. Mr. Kamal denied him admitting his presence at the bank premises on 11th December night and said he could not identify anybody by watching the video footages shown to him.
- (xi) He admitted that he lodged a complaint against Sergeant Mani at the Namuka building over the alleged assaults, though he is not aware of the outcome of the same. He said that he was afraid to complain about Mani to anybody while he was at large from 01st of January 2013 to 04th January 2013. Now it is your task to weigh the evidence given by Mr. Kamal and see whether you are ready to accept and act upon on his version.
- (xii) The CCTV footages played a significant role during the trial. You were shown the footages relied upon by the prosecution. It is the contention of the prosecution that though any specific person cannot be identified from the footages, the 2nd accused admitted his participation to the crime as it is clear from the recording the type of shoes that the two persons were wearing. The learned defense counsel argues that the video footages do not take you anywhere as it could only be seen below the knee level of two figures. Now you have to decide madam assessor and gentlemen assessors what claim appeals to your practical and common sense most.
- (xiii) Apart from the specific allegations of assaults by the two accused, the learned Defense counsel points out to several issues pertaining to the records maintained by the police officers. You would recall that the learned defense counsel showed the time difference of the Station Diary and the Cell Book Diary, 08.55 hours, and 09.55 hours, on 31st December 2012 in respect of the 1st accused putting inside the cell, after the verbal interrogation in the 2nd floor at Labasa Police Station. The other instance is that the non-availability of records when the 2nd accused was taken to Delailabasa Police Post on 31st December 2012 and bringing him back to Labasa Police Station. Even the non-availability of the 'white gallon,' alleged to have found on the roof top, for the inspection of court during the trial was also

highlighted by him. It was stressed that not a single finger print was identified at the scene and in particular, on this white gallon, if it was recovered from the roof top as alleged. The preparation of two Search Warrants, one to Royale Diner Hotel (Prosecution Exhibit No 12 B) and the other to North Pole Hotel (Defense Exhibit No. 01) was questioned by the learned counsel whilst pointing that the search list prepared out of the items alleged to have taken into custody from the 'black bag', states as 'North Pole'. All these issues were highlighted to show that the investigation was not done legally and fairly and thus caused unfairness to the accused. At the end of the day you have to determine whether or not these factors caused any unfairness to the accused, during the investigating process, when determining the voluntariness of the 'confessions'.

- (xiv) Finally, the 'black bag' alleged to have been recovered with certain items, attracted much attention of both parties. The prosecution said that it clearly connects the 1st accused with the 'fire' in issue when considering the items found inside. It was highlighted that the piece of mosquito net, the tin cutter and the spanner clearly show the intention of the accused to set fire again to the bank. On the other hand, the defense argued that these items do not connect the 1st accused to the crime and were just some 'items', if at all those were recovered from the possession of the 1st accused. But, the 1st accused denied in court his involvement with the bag. You madam assessor and gentlemen assessors have to decide in which way that you are going to think of this 'black bag' after analyzing the presented evidence in court.

10. SUMMARY

- (i) Now it is the time for you to retire for your deliberations. I remind you once again madam assessor and gentlemen assessors, that the prosecution must prove to your fullest satisfaction that the two caution interviews (Prosecution Exhibit No. 05 and 07) and charge statements (Prosecution Exhibit No. 06 and 08) of the two accused which contain admissions to the commission of the crime was in fact made voluntarily and are true in content. If you are sure of that, you may return with an opinion of 'guilty'.

- (ii) If you are not sure of the voluntariness or truthfulness of those confessions, the benefit of your doubts should be awarded to the accused immediately and must return with an opinion of 'Not Guilty'. Please remind once again that it is the duty of the prosecution to prove the elements of the charge of 'arson' individually against each accused. The accused do not have any burden what so ever. The fact that you do not believe the narrations of the two accused do not necessarily mean that the prosecution proved their case beyond reasonable doubt. Still they must establish all the elements of the charge to your fullest satisfaction.
- (iii) Your possible opinions in this instance are 'GUILTY' or 'NOT GUILTY' to the charge of 'arson'. You will have to express separate opinion on each accused and that is why you were directed to consider evidence separately against each accused.
- (iv) Before you retire for your deliberations, may I know whether there are any re-directions or further directions to be given to the assessors.

Ms. Low?

Mr. Maopa?

Janaka Bandara
Judge
11.03.2014

At Labasa

Solicitors

Office of the Director of Public Prosecutions for State

Office of Messrs Babu Singh & Associates Nadi for Accused