

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 30 OF 2015

STATE

-v-

1. MANASA TALALA
2. SERUVI CAQUSAU
3. KELEVI SEWATU
4. PENAIA DRAUNA
5. FILISE VERE
6. VILIAME VEREIVALU
7. JONA DAVONU
8. PITA MATAIRAVULA
9. SENITIKI NATAKASAVU

Counsel: : Mr. Lee Burney with Ms. J. Fatiaki for the State
 : Mr. I. Khan with Ms. Baleilevuka for Accused
Date of Summing Up: 8th November 2016
Date of Judgment : 11th November 2016

JUDGMENT

1. All nine accused are jointly charged with RAPE and SEXUAL ASSAULT on first four counts and only 1st and 6th accused are charged with DEFEATING THE COURSE OF JUSTICE on 5th and 6th counts.

2. Information is as follows:

COUNT 1 [All Accused]
Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) read with Sections 45 and 46 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, SERUVI CAQUSAU, KELEVI SEWATU, PENAI A DRAUNA, FILISE VERE, VILIAME VEREIVALU, JONA DAVONU, PITA MATAIRAVULA and SENITIKI NAKATASAVU on the 15th day of August 2014 at Malevu, in the Western Division, penetrated the anus of VILIKESA RATU SOKO with a stick without his consent.

COUNT 2 [All Accused]
Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) read with Sections 45 and 46 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, SERUVI CAQUSAU, KELEVI SEWATU, PENAI A DRAUNA, FILISE VERE, VILIAME VEREIVALU, JONA DAVONU, PITA MATAIRAVULA and SENITIKI NAKATASAVU on the 15th day of August 2014 at Malevu, in the Western Division, unlawfully and indecently assaulted VILIKESA RATU SOKO by rubbing chilies to the anus of the said VILIKESA RATU SOKO.

COUNT 3 [All Accused]
Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) read with Sections 45 and 46 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, SERUVI CAQUSAU, KELEVI SEWATU, PENAI A DRAUNA, FILISE VERE, VILIAME VEREIVALU, JONA DAVONU, PITA MATAIRAVULA and SENITIKI NAKATASAVU on the 15th day of August 2014 at Malevu, in the Western Division, penetrated the anus of SENIJELI BOILA with a stick without his consent.

COUNT 4 [All Accused]
Statement of Offence

RAPE: Contrary to Section 210 (1) (a) read with Sections 45 and 46 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, SERUVI CAQUSAU, KELEVI SEWATU, PENAI A DRAUNA, FILISE VERE, VILIAME VEREIVALU, JONA DAVONU, PITA MATAIRAVULA and SENITIKI NAKATASAVU on the 15th day of August 2014 at Malevu, in the Western Division, unlawfully and indecently assaulted SENIJELI BOILA by rubbing chilies to the anus of the said SENIJELI BOILA.

COUNT 5 [1st Accused]
Statement of Offence

DEFEATING THE COURSE OF JUSTICE: Contrary to Section 190 (e) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MANASA TALALA, on or about the 21st day of August 2014 at Sigatoka, in the Western Division attempted to obstruct, prevent, pervert or defeat the course of justice by instructing SC SEMI RAVUIWASA, SC MACIU TEMO and PC USAIA NATAKURU to make false statements in connection with a Police Internal Affairs Investigation into alleged misconduct on 15th day of August 2014.

COUNT 6 [6th Accused]
Statement of Offence

DEFEATING THE COURSE OF JUSTICE: Contrary to Section 190 (e) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

VILIAME VEREIVALU on or about the 26th day of August 2014 at Suva, in the Central Division attempted to obstruct, prevent, pervert or defeat the course of justice by instructing SC KEPONI PAUL and SC APETE NAIKOLO to make false statements in connection with a Police Internal Affairs Investigation into alleged misconduct on 15th day of August 2014.

Analysis

3. The trial was conducted before FOUR assessors. Assessors found the 4th, 5th, 6th 7th 8th and 9th accused guilty on 1st Count of Rape and 2nd Count of Sexual Assault unanimously. In respect of other counts, they found all the accused not guilty.
4. While accepting guilty opinion they formed in respect of first two counts I find the opinion of assessors perverse and not possible on the directions I gave in my summing up. I give my reasons as follows.
5. It is admitted by the Defence that Soko, one of the victims in this case, had told the doctor when he was taken to the Nadi hospital that he was assaulted by police and chilies were put in his anus and a stick was inserted into his anus. It is also admitted that both victims, Soko and Boila, had been anally penetrated on the 15th of August 2014.
6. Boila in Court said that chilies were rubbed on his whole body, his private part and anus and the same thing was done to Soko. Juicy chilies were put into his anus using fingers and a stick while he was resisting. They put the stick inside his anus. He suffered injuries in his anus from this stick that went inside. They did the same thing to Soko. Doctor saw some injuries inside his anus when he was examined. This part of Boila's evidence was

never disputed either by the Prosecution or the Defence. When considered this evidence in light of agreed facts, eye witness accounts and what some of the accused had told in their caution statements, I am sure that Boila told the truth in this part of his evidence although he was a made a hostile witness. Therefore, I accept that part of his evidence and conclude that both the victims were sexually assaulted and raped.

7. Prosecution relies on two legal principles to attribute criminal liability to the accused; namely, Complicity and Common Purpose described in Section 45 of the Crimes Decree 2009 and the legal concept which is broadly known as Joint Enterprise described in section 46 of the Crimes Decree 2009.
8. Prosecution says that all accused persons were part of a joint enterprise or common design to bring Boila and Soko to Malevu hill to subject them to torture for the purpose of interrogation and, as part of that plan, they either agreed to sexually assault the victims or foresaw that rape and sexual assault were probable consequences of the planned enterprise for which each accused must be responsible for. The Prosecution also says that all the accused either actively assisted in this plan or did nothing to stop the crimes which, as police/ military officers, they had a duty to do in law.
9. Defence, on the other hand, submits that the evidence adduced by the Prosecution is highly unreliable and that there is no evidence that the accused persons were involved in the commission of alleged offences; that the suspects were already injured by the time the accused went to the hillside either being assaulted by arresting officers or villagers; that there is no evidence of a joint enterprise and the accused had gone to the hillside in pursuit of a suspicious taxi; that these accused were handpicked from 25-30 officers and that the indictment is nothing but a 'blame game' of the Police Internal Affairs Unit to save others. They also say that, except for the 1st accused's' caution statement, caution statements of other accused had been obtained involuntarily and therefore they are not truthful statements to be acted upon.
10. I direct myself in accordance with my own summing up and analyse all the evidence led in the trial. I am satisfied that the version of the Prosecution is truthful and reliable and no reasonable doubt had been created by the Defence for me to reject it.

11. Altogether 23 witnesses were called by the Prosecution and, except Boila, all other witnesses were either police or military officers. The fact that no laymen gave evidence does not compel me, in the circumstances of this case, to find that Prosecution's version untrustworthy. It appears that the very purpose of taking the suspects to a remote hill side was to ensure that no laymen witness the incident.
12. Some witnesses had given several contradictory statements to police. They gave acceptable explanations for doing so and for omissions and inconsistencies. This is not a normal case of police recording statements from lay witnesses. This is what can be described as police v police case where some witness statements of junior police officers had been recorded by senior police officers either on the instructions of accused or by accused themselves. Some witnesses had given statements against their own free will either due to pressure or loyalty towards their colleagues and senior officers knowing very well that they were not telling the full truth. Police Internal Affairs Unit officers had intervened to spoil a cover up plan orchestrated by some senior police officers including the accused, and as a result of which several witness statements had been recorded. There is no evidence to substantiate the claim that witnesses had been pressurized to make up a case against the accused as part of a 'blame game' of the Police Internal Affairs Unit officers to cover up or save some officers.
13. It was obvious that some witnesses were shy or reluctant to give evidence against their own colleagues and former superior officers. Jone and Timoci Nasilisila who had served as drivers of the 1st and 2nd accused respectively were good examples. Some witnesses appeared to have had the courage to stand up to tell the truth. Apete and Usaia were good examples. In assessing the credibility of evidence, I took all these things into consideration.
14. Except for identification evidence given by Boila in respect of the 9th accused, identification evidence given by other witnesses was not in dispute in this case. The investigating officer Tevita explaining the reason why an identification parade was not held. He said that Boila knew the 9th accused beforehand. Boila admitted having told the story contained in the statement he made to police on the 25th of August 2014, a few days after the incident. In that he had stated that he knew the officers from the Strikeback Unit

and one Pita who was a military officer. Boila said in Court after he was made a hostile witness that he did not know Pita before and it was the police officers that informed him that Pita was a military officer. To ascertain the truth, I looked at 4th accused Drauna's caution statement. In that Drauna stated that Suva Strikeback officers were calling one suspect 'Buster'. He stated in answer to question 74 that "*they questioned Soko and after a while went to 'Buster' and then back and forth*". The reasonable inference I can draw from this evidence is that Boila had known Suva Strikeback officers and Pita beforehand.

15. Prosecution relies on circumstantial evidence to prove that the accused were on a joint enterprise to torture the victims for the purpose of interrogation and as part of their plan they had tacitly agreed to sexually assault the suspects or they foresaw that offences in the nature of rape and sexual assault were probable consequences of their plan. Defence on the other hand takes up the position that there was no evidence of joint enterprise and that the accused persons went accidentally to the Malevu hillside in pursuit of a suspicious taxi.
16. Prosecution proved beyond reasonable doubt that accused persons were engaged in a joint enterprise to torture the victims and as part of their plan each accused tacitly agreed to sexually assault the victims. I am also satisfied that rape and sexual assault were probable consequences of their plan which they could have foreseen.
17. Although I was fully satisfied that accused persons had a common design to torture the suspects for the purpose interrogation, I had some doubts when I glanced though the evidence at the close of the Prosecution case whether accused had agreed to asexually assault the victims as part of their plan. However, after listening to the closing submission of the Prosecution and doing a thorough examination of evidence at its highest, I am now certain that accused not only agreed to torture the suspects but also tacitly agreed to sexually assault the victims as part of their torture project.
18. After the arrest of Boila and Soko (suspects), instead of them being taken to the nearest police station (Sigatoka), they had been taken to a remote hillside. Both arresting officer Apakuki and Sigatoka Crime Officer Acting Inspector Bari conceded that this happened in violation of accepted police procedures. IP Bari had to change his own lawful order

already issued to arresting officers to take the suspects to Sigatoka Police Station when he received instructions from his superior officer 1st accused SP Manasa. Bari's evidence was supported by other arresting officers including Apakuki. Custody of arrested suspects had been obtained from the arresting officers at the hillside without any paperwork by some of the accused persons of the Lautoka fleet, again violating police procedures. Junior arresting officers were not concerned about the handing over procedure because they were only following orders of the accused persons present at the hillside who were their senior officers.

19. Accused persons who were in Manasa's fleet as well as those in Seruvi's fleet were constantly engaged in telephone conversations with the arresting officer Apakuki whereby they came to know that two suspects had already been arrested at Tagaqe village. 1st accused Manasa confirmed in his caution statement that he received this information as he was heading for Korolevu. His driver Jone in his evidence and 4th accused Drauna who was in the same fleet confirmed in his caution statement that they received this information from Apakuki before reaching Sigatoka. Seruvi, the team leader of the Lautoka Strikeback Unit, received the same information when his fleet was in Sigatoka and instructed his driver to drive towards the hill past Malevu village. 9th accused who was in Seruvi's fleet also confirmed that someone in his fleet received this information when they were in Sigatoka and someone from his fleet got chilies from Sigatoka Market and kept on heading towards Malevu.
20. The version of the Defence that accused persons went accidentally to the Malevu hillside in pursuit of a suspected taxi is highly unreliable and not supported in anyway. Even though accused did not have anything to prove in this case, in light of mixed statement direction I gave in my summing up, accused are required to support their version under oath if they want this Court to believe their story. None of them have come forward to support their out of court statements. Therefore, accused's version is not appealing to me.
21. 1st accused's driver Jone in his evidence told the same story and almost sailed with what the accused had said in their respective caution statements. Even though Jone was called by the Prosecution I find the evidence of Jone highly implausible. He was evasive and astonishingly forgetful of events that took place on that unfortunate day. He had travelled

nearly hundred times to Suva but was unable to tell at least the rough distance between Koralevu and Sigatoka. He contradicted himself on his own evidence on the telephone information he received from Apakuki.

22. There is no evidence whatsoever that a suspicious black taxi had turned towards Malevu hill. Apakuki was never questioned if he gave such information. Even if the accused had received such information, it is highly unlikely that a flotilla of five vehicles wanted to follow a suspicious taxi including the police truck with the two suspects and a dog.
23. Therefore, I accept the version of the Prosecution which was never shrouded in any doubt. I come to the conclusion that victims were taken to the hillside to subject them to torture for the purpose of interrogation.
24. The 6th, 7th and 8th accused had come all the way from Suva after being informed of the robbery at Nadi by the 4th Accused. According to Apete, they also received information that two suspects had been arrested and detained at the hill side. Having turned the vehicle at Outrigger, Suva Strikeback fleet had taken a U turn and gone back to interior of Malevu without waiting for the suspects to be brought to the Sigatoka Police Station for questioning. I am sure they are also part of the common plan.
25. There can be no doubt that all the accused persons had gone to the hillside as part of their joint enterprise. Police officers and military officers doing police duties ought to know the procedure followed after an arrest of a suspect had been made. Despite that knowledge all the accused went to a remote hillside to interrogate the two suspects. There is no evidence that anyone of them had gone there without their own free will. Nor was there evidence that anyone of them had withdrawn from the common plan. Therefore, I find that each of them had shared the criminal intention to torture the victims.
26. Next question to be sorted out is whether they had tacitly agreed to sexually assault the victims. Within the knowledge of the 9th accused, someone from his fleet got chilies from the Sigatoka market. Four pairs of rubber hand gloves were readily available at the hillside and the 5th accused Filise, upon being pointed out by someone, took four of them from his vehicle before rubbing chilies on the suspects. 9th accused used the word 'siliboro' to describe the practice of rubbing chilies on eyes, ears and anus giving the

impression that 'siliboro' is a common practice of torture known to police officers. Both the suspects were fully stripped naked. When considered these circumstances and the fact that a common intention can be formed and shared on the spur of the moment, I can safely come to the conclusion that each of them agreed to sexually assault the victims.

27. All these pieces of evidence compel me to conclude beyond reasonable doubt that two suspects were brought to Malevu hillside to be tortured and acts of rubbing chilies on their anuses were part of their agreed plan.
28. Furthermore, when considered in the circumstances of this case, I have no difficulty in coming to the conclusion that the offences of sexual assault and rape (in the form of penetrating one's anus with an object) were probable consequences of that humiliating interrogation process which could have been foreseen by each accused. Using the word 'siliboro' by one of the accused to describe the practice of rubbing chilies on the anus etc. indicates that it is a known practice among police officers in Fiji. When they agreed to interrogate suspects using the practice of 'siliboro' each of them in the group could have foreseen that someone in the group would insert an object into the anuses of the suspects. It is not a remote consequence of the project they all agreed upon. This is not a robbery case where one of the robbers in the gang, unexpectedly executing his hidden agenda of satisfying his lust, commits a rape on an inmate. The very purpose of the project of the accused here is to torture the victims. Therefore, each of the accused present at the crime scene as part of the project should be held responsible not only for sexual assaults but also for rapes.
29. Prosecution relies on circumstantial evidence to prove that it is these accused persons and no one else perpetrated these offences on the victims. Evidence led in the trial proved that there were only 21 police and military officers including the nine accused persons present at the hillside. Out of which 11 of them including the arresting officers gave evidence. It was never put to any of the Prosecution's witnesses that they were responsible for rapes and sexual assaults. Nor was there any assertion by the Defence that officers who did not give evidence were responsible for those assaults.

30. Evidence of Boila (who was made a hostile witness) that none of the accused persons were involved in perpetrating the acts of sexual assaults and rapes was not supported by any other evidence. His evidence in this regard is totally contradictory to his previous statements to police. Boila had told the police on the 20th September 2014, nearly one month after the incident, that Pita with the assistant of other officers was inserting a piece of stick into Soko's anus. He had never mentioned the names of arresting officers in any of his previous statements. Therefore, Boila's evidence in this regard is unacceptable and should be rejected.
31. Even the version of the Defence does not support Boila's evidence that arresting officers were involved in these crimes. All the arresting officers gave evidence in Court and it was never put to them by the Defence Counsel that they were responsible. If they were the people whom the Internal Affairs Unit officers were trying to save as part of their 'blame game', Defence counsel should have received instructions in this regard and the Court could have expected the Defence Counsel to cross examine the Prosecution witnesses on that point. Furthermore, there was no suggestion by the Defence that officers who did not give evidence including Keponi who could not give evidence on medical grounds were responsible. They were only speculating and putting the blame on some unidentified and undisclosed people.
32. 1st Accused's driver Jone was guessing that 25-30 people were present at the hillside at the material time. His guesswork is not concrete. Furthermore, for reasons I have given elsewhere in this judgment, Jone is a highly unreliable witness. The version of the Defence that the Internal Affairs Unit officers handpicked only the accused persons as part of their 'blame game' was never supported by the Defence in evidence. The decision to indict only these nine accused had eventually been taken by the Director of Public Prosecution on the basis of evidence placed before him by the Director of the Internal Affairs Unit. Having considered all these evidence, the only inference that can be drawn by this Court is that it is the accused persons and no one else committed these offences.
33. There is ample evidence including admissions of the accused themselves that all the accused persons were present at the crime scene at the material time. As an alternative to the joint enterprise claim, Prosecution says that all the accused persons were responsible

for rapes and sexual assaults either as the principle offender or offenders for aiding and abetting the principal offender or offenders.

34. I am satisfied that each accused aided or abetted (assisted or encouraged) with the intention of assisting or encouraging the principal offender or offenders in the commission of the offences with knowledge of what the principal offender or offenders were doing.
35. Anyone who abets or aids the principle offender, anyone who counsels or procures or advises the principle offender is also guilty of the offence. Pursuant to Section 45 of the Crimes Decree, it is not necessary for the Prosecution to prove in respect of each accused whether he is a principle or secondary offender. All that is required is proof that the respective offences were committed and that the conduct of each accused must have aided or abetted (assisted or encouraged) with the intention of assisting or encouraging the commission of those offences with knowledge of what the principal offender is doing. The essence of aiding and abetting is intentional help.
36. There can be no argument that mere presence at the crime scene does not constitute aiding and abetting. However, in the circumstances of this case I am sure beyond reasonable doubt that accused's presence at the crime scene at the material time with full knowledge of the facts of the offences constituted intentional assistance or encouragement in the commission of the offences.
37. The real question here is how far inaction, passive tolerance, can amount to assistance so as to make the accused guilty of aiding and abetting. The mere passive acquiescence is sufficient only where the alleged aider and abettor has the power to control the offender and is actually present when the offence is committed with the knowledge of the facts which constitute the offence. Prosecution is relying on this principle to attribute criminal liability to the 1st and 2nd accused.
38. Furthermore, all the accused persons were law enforcement officers by virtue of their office as police and military officers and they were duty bound to prevent crimes. Their inaction or passivity with knowledge of alleged crimes that were being committed constituted aiding and abetting.

39. There may be circumstances in which mere presence is prima facie evidence of aiding and abetting. Police officers have a special role given to them by the law. Section 17(3) of the Police Act says that “It shall be the duty of every police officer... to prevent the commission of offences, and public nuisance, to detect and bring offenders to justice...” so police officers cannot stand by and allow offences to be committed in front of them. They must prevent the commission of offences, and bring the offenders to justice. In the Fijian context, military officers who are engaged in police duties no doubt are also covered by this law.
40. Where a person has a duty to intervene to prevent the commission of a crime by another, his failure to intervene may be a positive encouragement to the other to commit, or to persist in the commission of, an illegal act. If a person's inactivity is a positive encouragement to another, and he knows it is a positive encouragement to that other, to commit an offence, then the inactivity amounts to aiding and abetting. Every police officer obviously has a duty to intervene to prevent the commission of a crime, such as an assault, by whomsoever it may be committed, including his fellow officers. If one police officer or military officer engaged in police duty stands by and watches his colleague beat up a suspected person, it may well be that the first officer encourages, and knows that he encourages, the second to commit the offence.
41. In light of these legal principles, I analyse the evidence led in the trial in respect of each accused.

1st Accused Manasa

42. 1st accused, as the Divisional Crime Officer, and the 2nd accused, as the leader of the Lautoka Strikeback Unit, were in a controlling position vis-à-vis other accused. I find that their continued presence at the crime scene at the material time provided a positive encouragement to commit the offences and therefore constitutes aiding and abetting the commission of the offences.
43. Defence concedes that the caution statement of the 1st accused was given voluntarily. They even sought the assistance of his caution interview and various excuses and denials contained therein to support 1st accused's defence. However it proved otherwise.

44. 1st accused Manasa was in overall command of the Western Police Crime Division. He admits in his caution statement seeing the suspects inside the truck which was parked at hillside about 5-10 m away from him. He directed two of his officers to question the suspects about other accomplices and their whereabouts. He heard a loud questioning. Someone who followed his instruction came with the names of accomplices revealed by the suspects. He saw both the suspects in the truck handcuffed and also blood on their faces.
45. Manasa denied assaulting or seeing any of the suspects getting beaten up or being sexually assaulted. He however did not give evidence to support his denial. In view of the mixed statement direction I gave in my summing up, his denials and excuses do not help him. He has not supported his position under oath. If he was located only 5-10 meters away from the suspects, he should have seen what was happening at the hillside. There is evidence that both Soko and Boila were shouting in pain on top of their voices when a stick was being inserted into their anuses and chilies were being rubbed on that part. His denials and excuses that he was totally unaware of these offences are unacceptable and should be rejected.
46. I am sure; the 1st accused was not a mere bystander. Extracting information from the suspects was the main purpose of the whole enterprise which he eventually achieved. He has participated in the crimes with criminal intention. He has done nothing to prevent crimes being committed in his presence. Although there is no concrete evidence that he had done any physical act, his passivity or inaction with full knowledge of facts of the offences provided positive encouragement to others in the commission of the offences. He was also acting in concert with others in furtherance of the joint enterprise. Therefore, 1st accused should be held responsible for the offences in counts 1 to 4 of the Information on the basis of the notion of joint enterprise and also aiding and abetting the commission of the crimes so as to make him guilty of Rapes and Sexual Assaults committed by the principle offender or offenders on both the victims.

2nd Accused Seruvi

47. Seruvi was the team leader of the Lautoka Strikeback Unit. He admitted seeing two officers punching and kicking the suspects whilst being interrogated. He saw pounding chilies in a plastic container and rubbing chilies on Boila's face and anus. He saw somebody with hand gloves rubbing chilies on Soko's anus. He saw somebody poking a wooden stick inside Soko's anus. He interrogated Boila. He however denied any involvement in rapes and sexual assaults.
48. Seruvi did not support the denials in his caution statement in evidence. Having reviewed my own finding on trial within trial and other supporting evidence led in the trial which corroborated his version, I am satisfied that Seruvi told the truth to the police. He had seen the offences being committed on the victims. He had done nothing to prevent the commission of offences and participated in questioning the suspects while offences were being committed by others. His conduct positively encouraged his subordinates to commit the offences so as to make him guilty of aiding and abetting. He was also part of a joint enterprise to subject the victims to torture for the purpose of interrogation and he must have foreseen that rape and sexual assaults as probable consequences of the joint enterprise. Therefore, 2nd accused should be held responsible for offences committed by the principle offender or offenders. He is guilty on counts 1 to 4 of the Information.

3rd Accused Kelevi

49. 3rd Accused Kelevi was a member of the fleet that was driven to the Malevu hillside. He got off from his vehicle at the hillside and later boarded the vehicle with the suspects who were then escorted to the Sigatoka Police Station. Two suspects were handed over to the 2nd, 3rd, and 5th accused at the hillside. His presence at the crime scene as a police officer constituted positive encouragement so as to make him liable for aiding and abetting the commission of offences. He was also part of a joint enterprise to bring the suspects to the hill side to subject them to torture for the purpose of interrogation and he must have foreseen that rape and sexual assault as probable consequences of the joint enterprise. Therefore, he should be held responsible for the offences charged in counts 1 to 4 of the Information.

50. I agree with the opinion of the assessors which held that 4th to 9th accused are guilty of Rape and Sexual Assault on counts 1 and 2 of the Information. However, I do not agree with their opinions on counts 3 and 4 in respect of 4th to 9th accused. I also do not agree with their opinions on counts 1 to 4 in respect of 1st, 2nd and 3rd accused. Both Soko and Boila were raped and sexually assaulted in the same transaction. Victims were a few meters apart when the offences were being committed. Each of the accused participated in the commission of the crimes either as the principle offender or aider or abettor. There is no rational basis for the assessors to come to the conclusion they have reached.

4th Accused Penaia

51. 4th accused Penaia admitted under caution that he was questioning the two suspects in the back of the truck handcuffed when another two teams arrived and got in the back of the truck. He was standing nearby and heard them being interrogated. He saw Soko's pants removed. He saw Soko being beaten up. He touched Soko by turning his face as he was facing downwards. He went to Soko to tell the officers to stop kicking the suspects. He denied any involvement in rapes and sexual assaults.
52. He did not give evidence to support his excuses and denials in the caution statement. Having reviewed my own finding on trial within trial and other supporting evidence led in the trial which corroborated his version, I am satisfied that Penaia told the truth to the police.
53. 4th Accused should have seen the offences being committed on the victims. He had done nothing to prevent the commission of offences and participated in questioning the suspects while offences were being committed by others. His conduct positively encouraged others to commit the offences so as to make him guilty of aiding and abetting. He was also part of a joint enterprise to subject the victims to torture for the purpose of interrogation and he must have foreseen that rape and sexual assault as probable consequences of the joint enterprise. Therefore, 4th accused should be held responsible for offences committed by the principle offender or offenders. I find the 4th accused guilty on Counts 1 to 4 in the Information.

5th Accused Filise

54. Filise admits in his caution statement wearing white gloves taken from his vehicle in order to rub chilies on the two suspects. He admits rubbing chilies on Boila's face and Soko's anus.
55. He did not give evidence to support his excuses and denials in the caution statement. Having reviewed my own finding on trial within trial and other supporting evidence led in the trial which corroborated his version, I am satisfied that he told the truth in his caution statement and he should be held responsible as one of the principal offenders in the sexual assaults.
56. He was also part of a joint enterprise to subject the victims to torture for the purpose of interrogation and he must have foreseen that rape and sexual assaults as probable consequences of the joint enterprise. Therefore, 5th accused should be held responsible for offences committed. I find the 5th accused guilty on Counts 1 to 4 in the Information.

6th Accused Viliame

57. 6th accused was one of the officers arrived at the hillside as part of the Suva Strike back fleet. He was the team leader of the Suva team. He got off at Malevu hillside and proceeded to have a conversation with the Western Officers. He jumped inside the police truck with 7th and 8th accused and was kicking and punching Soko's stomach while Soko was shouting in pain.
58. I am satisfied that his acts and his presence at the crime scene constituted aiding and abetting the commission of offences. He was also part of a joint enterprise to subject the victims to torture for the purpose of interrogation. He must have foreseen that rape and sexual assaults as probable consequences of the joint enterprise. Therefore, 6th accused should be held responsible for offences committed. I find the 6th accused guilty on counts 1 to 4 of the Information.

7th Accused Jona

59. 7th accused is one of the members of the Suva Strike back team. He was standing beside Soko who was naked and lying on the ground. He got off at Malevu hillside and proceeded to have a conversation with 'Western Officers'. He jumped inside the Police truck with the 6th and 8th accused and were kicking and punching Soko's stomach while asking questions and Soko shouting in pain. He was standing beside the truck as Soko and Boila were rubbed with chilies.
60. I am satisfied that his acts and the presence at the crime scene constituted aiding and abetting the commission of offences. He was also part of a joint enterprise to subject the victims to torture for the purpose of interrogation. He must have foreseen that rape and sexual assaults as probable consequences of the joint enterprise. Therefore, the 7th accused should be held responsible for offences committed. I find the 7th accused guilty on counts 1 to 4 of the Information.

8th Accused Pita

61. 8th accused was speaking to officers from the West before getting into the back of the truck. Soko was shouting in pain when he was standing beside the truck as Soko and Boila were rubbed with chilies. He resumed the assault on Soko as the 'Western Officers' stood around.
62. I am satisfied that his acts and his presence at the crime scene constituted aiding and abetting the commission of offences. He was also part of a joint enterprise to subject the victims to torture for the purpose of interrogation. He must have foreseen that rape and sexual assaults as probable consequences of the joint enterprise. Therefore, the 8th accused should be held responsible for offences committed. I find the 8th accused guilty on counts 1 to 4 of the Information.

9th Accused Senitiki

63. 9th accused admitted under caution that he saw someone wearing gloves just about to 'siliboro' Boila. He explained 'siliboro' to mean rubbing chilies into the eyes, ears and anus. He admitted to standing in the middle of the road writing down names provided by

Soko and Boila as they were being rubbed with chilies. He admitted slapping Boila's head to extract the names of accomplices.

64. He did not give evidence to support his excuses and denials in the caution statement. Having reviewed my own finding on trial within trial and other supporting evidence led in the trial which corroborates his version, I am satisfied that Senitiki told the truth to the police.
65. Defence challenged the fairness of recording process of his interview. Having considered the evidence led in the trial within trial, part of his caution interview was held inadmissible by this Court. Defence was not specific as to which part of his caution statement was taken by Stg. Meraiseni to a night drinking party for the 9th accused to sign. Therefore, my finding on the voluntariness and fairness of his caution statement remains intact.
66. Senitiki had seen the offences being committed on the victims. He had done nothing to prevent the commission of offences and participated in questioning the suspects while offences were being committed by others. His conduct positively encouraged others to commit the offences so as to make him guilty of aiding and abetting the commission of offences. He was also part of a joint enterprise to subject the victims to torture for the purpose of interrogation and he must have foreseen that rape and sexual assaults as probable consequences of the joint enterprise. Therefore, the 9th accused should be held responsible for offences committed by the principle offender or offenders. I find the 9th accused guilty on Counts 1 to 4 of the Information.

Defeating the Course of Justice (5th and 6th Counts)

67. In order to establish the guilt of the 1st and 6th accused on counts 5 and 6 respectively, the Prosecution must prove that the 1st and the 6th accused did an act or omitted to do an act with an intention to pervert the course of justice.

1st Accused – Count 5

68. PC Usaia gave evidence that he was collected from his home at 4 a.m. on 21st August 2014, on the following day of Soko's death, and driven to Sigatoka. He was present at a

meeting together with many officers from Western Division including the two dog handlers (SC Semi and SC Temo) and Apakuki. 1st accused Manasa briefed them about the 15th August incident and the Internal Affairs investigation arising from the death of Soko. Usaia gave a statement on 21st of August 2014 based on instructions received at the briefing which was false. The statement was a result of what the 1st accused had briefed him to say about the incident on 15th August 2014.

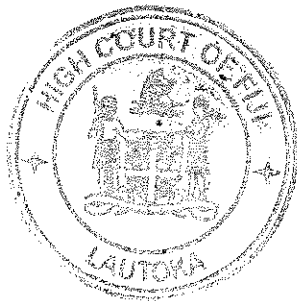
69. SC Temo said that, on the 21st of August 2014, he was asked by Sargent Suliano to make a statement at the Sigatoka Police station in relation to the incident. He was taken to Sigatoka Police Station in a police vehicle around 7 in the morning.
70. D/Sgt Bari gave evidence that he was present at the briefing at Samisoni's house at which 1st accused instructed those present to make statements in connection with the Internal Affairs investigation that the handover of the two suspects was taken place at the Sigatoka Police Station.
71. Samisoni on the hand said in the later part of his evidence that Manasa was not involved in arranging the meeting in his house and Manasa was not present on that day.
72. Samisoni is a highly unreliable witness. He came as a Prosecution's witness and appears to have given evidence for the Defence. He talked about Manasa's character when he was not competent to speak to his character. He was not the officer who kept personal records of police officers. He had hosted a breakfast at his house to all the officers present at the meeting but, as the OIC of the Sigatoka Police Station, he had not kept any record of the meeting and was not aware for what purpose they had gathered. According to Bari, Samisoni is the one who had made all the arrangements to convene the meeting on the instructions of the 1st accused. Samisoni's own evidence (first part) corroborated this evidence. According to Usaia, Samisoni had been present at the meeting with the 1st Accused. Samisoni had not mentioned anything about the breakfast party in his statement recorded on 21st August, 2014 and in his evidence-in-chief. I reject Samisoni's evidence as he proved himself to be an interested witness *vis-à-vis* the Defence. I accept the evidence of the Prosecution. Prosecution proved the 5th charge beyond reasonable doubt. I find the 1st accused guilty on Count 5.


6th Accused – Count 6

73. SC Apete gave evidence that after Soko passed away his team leader, 6th accused, instructed him to provide a witness statement as to what he saw. This statement was recorded by WPC Tima in the presence of the 6th accused. It was not a full account of what actually happened because the 6th accused informed him to leave out certain details. A second statement recorded by WDC Taufu was also not the full truth as a result of what he was instructed by the 6th accused.
74. Credibility of the Apete's evidence was challenged successfully. I accept the Evidence of the Prosecution. Prosecution proved the charge beyond reasonable doubt. I find the 6th accused guilty on Count 6.

Result.

75. For reasons given, I agree with the unanimous opinion of the assessors that 4th 5th 6th 7th 8th and 9th accused are guilty on counts 1 and 2 of the Information. I reject their other opinion. I find all accused 1 to 9 guilty on all the counts with which they had been charged. That is the Judgment of the Court.




Aruna Aluthge
Judge

AT LAUTOKA
11th November, 2016

Counsel: Office of the Director of Public Prosecution for Prosecution
Iqbal Khan & Associates for the Accused