IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 149 OF 2013L

STATE

vs

VINEND KUMAR

Counsels	:	**Ms. L. Latu for State**
		Mr. M. Fesaitu and Ms. A. Prakash for Accused
Hearings	:	**22 and 23 November, 2016**
Ruling	:	**23 November, 2016**
Written Reasons	:	**23 December, 2016**

WRITTEN REASONS FOR VOIR DIRE RULING

1. In Lautoka Criminal Case No. HAC 149 of 2013L, the accused faced the following information:

COUNT 1

Statement of Offence

ATTEMPT TO COMMIT RAPE: Contrary to section 208 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

VINEND KUMAR on the 15th day of July 2013 at Malele, Tavua in the Western Division, attempted to penetrate the vagina of **SITAMMA** with his penis, without the consent of the said **SITAMMA**.

COUNT 2

Statement of Offence

MURDER: Contrary to section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

VINEND KUMAR on the 15th day of July 2013 at Malele, Tavua in the Western Division, murdered **SITAMMA**.

2. During the police investigation, the accused was caution interviewed by police on 18, 19 and 20 July 2013 at the Tavua Police Station in the English language. He was later formally charged by the police on 20 July 2013. In his caution interview and charge statements, the accused allegedly admitted the offences mentioned in the information. On 22 and 23 November 2016, the accused challenged the admissibility of the above caution interview and charge statements in a voir dire hearing.

3. The prosecution called 7 witnesses – 6 police officers and 1 civilian. The defence called 1 witness, that is, the accused himself. There were 8 witnesses altogether. I heard the parties' witnesses' evidence and their closing submissions on 22 and 23 November 2016. I then ruled the accused's caution interview and charge statements as admissible evidence, and they could be used as evidence in the trial proper, but its acceptance or otherwise will be a matter for the assessors. I said I would give my reasons later. Below are my reasons.

4. The law in this area is well settled. On 13th July 1984, the Fiji Court of Appeal in ***Ganga Ram & Shiu Charan*** v ***Reginam***, **Criminal Appeal No. 46 of 1983,** said the following, *"....it will be remembered that there are two matters each of which requires consideration in this area. First, it must be established affirmatively by the crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – what has been picturesquely described as the "flattery of hope or the tyranny of fear" Ibrahim v R (1941) AC 599, DPP v Ping Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ C – E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account ...."*

5. The dispute between the parties in this case was characteristic of voir dire hearings. The police said that they did not assault, threaten or made promises to the accused while he was in their custody. They said, they did not force him or pressure him to make his caution interview and charge statements. They said, he signed all the pages of his interview notes and charge notes out of his own free will. They said, he gave his alleged admission voluntarily. They said, he was given his right to counsel and other rights. They said, he was formally cautioned and given the standard rest and meal breaks.

6. The accused, on the other hand, said exactly the opposite. He said, on oath that, the police threatened to rub chillies on his anus or put a police baton with chillies on it into his anus, if he did not admit the offences. He said, the police also hit him with a stick. He said, he was frightened and scared. He said, the police called a Justice of Peace (PW4) to see him, and he, the JP, also threatened him. When cross-examined by prosecution, the accused said, the police punched his back 10 to 15 times. He said, as a result of the police assaults, he confessed to the crimes. He asked the court to rule his caution interview and charge statements, as inadmissible evidence.

7. I have carefully listened to and considered the parties' evidence. I have carefully compared and analysed them. I have considered their closing submissions. I have carefully considered the witnesses' demeanour. After considering the total evidence, I find the prosecution's witnesses' evidence more credible than the accused's evidence. Had he really been assaulted by police, he would have complained to the Magistrate Court or High Court, when he first appeared in those courts. He didn't. To me, that showed, he had no complaints against the police, and the consequential inference was that he was treated well in police custody. I accept the prosecution's version of events that he made his caution interview and charge statements voluntarily, and I ruled the same as admissible evidence.

8. In giving my reasons abovementioned, I bear in mind what the Court of Appeal said in **Sisa Kalisoqo v Reginam**, Criminal Appeal No. 52 of 1984, where their Lordships said: ***"...We have of recent times said that in giving a decision after a trial within a trial there are good reasons for the Judge to express himself with an economy of words..."***

9. The above were the reasons for my ruling on 23 November 2016.

Salesi Temo
JUDGE

Solicitor for State	:	Officer of the Director of Public Prosecution, Lautoka
Solicitor for Accused	:	Legal Aid Commission, Lautoka