

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 399 OF 2015S

STATE

vs

MATTHEW GUNUA

Counsels	:	Mr. S. Vodokisolomone and Mr. S. Shah for State
	:	Ms. A. Seruvatu for Accused
Hearings	:	2, 3 and 6 February, 2017
Ruling	:	6 February, 2017
Written Reasons for Ruling	:	8 March, 2017

WRITTEN REASONS FOR VOIR DIRE RULING

1. The accused was charged with aiding and abetting Binesh Prasad set his mother-in-law's dwelling house on fire, contrary to section 362 (a) of the Crimes Decree 2009 (Count No. 1: Arson); killing his wife, daughter, father-in-law and Mr and Mrs Ali, when they burnt to death therein, contrary to section 237 of the above Decree (Count No. 2, 3, 4, 5 and 6: Murders); attempting to murder his sister-in-law, when she burnt therein, contrary to section 44 and 237 of the above Decree (Count No. 7: Attempted Murder) and damaging Mohammed Khalil's taxi when the same was damaged by fire, contrary to section 369(1) of the above Decree (Count No. 8: Damaging Property).
2. During the police investigation, the accused was caution interviewed by police on 16, 17, 18 and 19 October 2015 at Nasinu Police Station. On 20 October 2015, he was formally charged

by police at the same Police Station. In his police caution interview and charge statements, the accused appeared to admit the offences. In a voir dire hearing on 2, 3 and 6 February 2017, the accused formally challenged the admissibility of his alleged confessions in his police caution interview and charge statements, on the ground that the police threaten and tricked him into confessing to the crimes. He said, they promised him immunity from prosecution if he admitted the offence.

3. The prosecution called four witnesses, three police officers and a civilian. The defence called the accused himself as their only witness. Altogether, there were five witnesses, on whose evidence the court will have to make a decision.
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 evidence of the prosecution's witnesses appear to be the same. They said, the accused was given his right to counsel and all the rights when he was caution interviewed and formally charged. They said, he was formally cautioned and was given the standard rest and meal breaks. They said, they did not assault, threaten or made false promises to him, while he was in their custody. They said, the accused gave his interview and charge statements voluntarily and out of his own free will.
6. The accused, on the other hand, appear to say exactly the opposite. He said, he surrendered himself to Nasinu Police Station on 16 October 2015. He said, the police threatened him. He said, the police told him if the victims were "i-taukei", they would beat him up. He said, he was

shocked and worried. He said, he was later caution interviewed. He said, the police did not explain his Constitutional rights properly to him. He said, they interviewed him for 4 days. He said, he was under so much pressure. He said, he was tricked into admitting the offences because the police promised him immunity from prosecution. He said, he did not give his interview and charge statements voluntarily.

7. I have carefully considered and compared the parties' evidence. I find the prosecution's witnesses' evidence credible, and I accept them. I find that the police did not assault, threaten or made false promises to the accused during his interview and when formally charged. I find he gave his caution interview and charge statements voluntarily and I declared the same as admissible evidence in the trial proper.
8. Despite making the above decision, my mind was not closed. Depending on the parties' performance in the trial proper and the opinions of the assessors, the acceptance or otherwise of the above alleged confessions in the trial proper, will be a matter for the assessors. I rule so accordingly on 6 February 2017.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for Accused : **A. Seruvatu, Barrister & Solicitor, Suva.**