

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 34 OF 2014

STATE

V

1. PITA NATEKURU
2. LAITIA NALAWA
3. JALE FATIAKI

Counsel: Mr J. Niudamu for the State

Ms K Vulimainadave with Ms Manueli for 1st and 3rd Accused

Mr R. Vananalagi for 2nd Accused

Dates of Hearing: 4th and 5th of July, 2018

Date of Ruling : 6th July, 2018

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the cautioned interviews and charge statements of the Accused produced at the Rakiraki Police Station.
2. The test of admissibility of all confessional statement made to a police officer is whether that was made freely and not as a result of threats, assaults or inducements made to the Accused by person or persons in authority. Further, oppression or unfairness also leads to the exclusion of the confession. Finally, where the rights of the suspects under the Constitution have been breached, this will lead to the exclusion of the confessions obtained thereby unless the Prosecution can show that the suspect was not thereby prejudiced.
3. What I am required at this stage is to decide whether the interviews were conducted fairly and whether the accused gave the statements voluntarily. If I find that the confessions were obtained violating their constitutional rights, then I can in my discretion exclude the interviews and charge statements.
4. The burden of proving voluntariness, fairness, lack of oppression, compliance with constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
5. All the accused filed *voir dire* grounds and challenged the admissibility of their caution interviews and charge statements on the basis that they were obtained using police brutality; violating their constitutional rights; and under oppressive and unfair circumstances.

6. Altogether, 7 police officers were called by the Prosecution to prove that all accused had given their respective caution statements and charge statements voluntarily. They said that accused were never oppressed, assaulted or threatened during arrest or while they were in police custody. They also said that caution interviews and charging took place in a fair manner affording the rights guaranteed to them. .
7. I find that the evidence of the police officers to be consistent and plausible.
8. Defence Counsel highlighted some discrepancies between the Station Diary and the evidence adduced at the hearing. The Court finds that there are no major inconsistencies between their evidence and station diary entries. None of them are material and sufficient for me to reject the version of the Prosecution. The witnesses gave acceptable explanations as to why such inconsistencies might have occurred. There was only one Station Diary for the station which had been maintained by the Station Orderly. He was based at the main police station building whereas the interviews had been conducted in the Crimes Office which was physically located in a separate building, opposite the main police station building. The officers at the same time had conducted several interviews with the Accused which were not connected to this case. It is possible under these circumstances to expect some discrepancies in the entries of station diaries.
9. There is no evidence that the 1st Accused had come and surrendered to the Rakiraki Police Station on the 14th March 2014 as the defence Counsel suggested. The Court can accept that the 1st Accused was arrested on the 15th March 2014 by police team led by Rajnesh Prasad when he surrenders himself at *Turaga-ni-Koro's* house in Vaidoko.
10. Police officers consistently maintained that no assault or intimidation took place before or during the interviews. 1st Accused never gave evidence to support his

ground that he was brutally assaulted by police officers. Although he had no burden to prove that he was assaulted, by maintaining his silence, he allowed the evidence presented by the prosecution witnesses that he was not assaulted to go unchallenged.

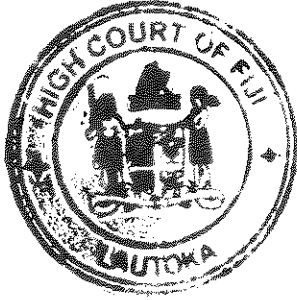
11. 2nd accused, said that he was assaulted by police officers whilst being escorted to the Lautoka Police Station. He also said that he was handcuffed behind and then the officers kicked his ribs and jumped on top of him and brutally assaulted even using police boots at the Lautoka Police Station *bure* and then in a room at the Rakiraki Police Station. He also said officer Bawaqa slapped him causing an injury on his lips. However, there is no evidence that 2nd Accused had visible injuries as a result of the alleged assaults. According to the Magistrates Court record, he had never complained to the Magistrate or sought medical treatments for injuries alleged to have been received due to police attacks.

12. There was only one passenger seat in the twin cab. It is hardly believable that 2nd Accused was seated in the front seat and quashed between Seruvi and Mossese after being arrested. 2nd Accused said that while he was being transported to Rakiraki, police officers kept on questioning him about whereabouts of Pita Natekuru. He then said that when he was taken to Rakiraki Police Station, Pita was already in police custody and had been assaulted in the room to which he was also taken for assaulting. If the Peta was already in custody, I can't see why the police officers questioned him about whereabouts of Peta. Furthermore, Peta had been arrested on the 15th of March 2014. 2nd Accused was taken to Rakiraki Police Station on the 13th and interviewed on the 14th March 2014. It is not possible therefore for both of them being beaten up together on the same day. For these reasons, I reject the evidence of the 2nd Accused that he had seen Peta being assaulted by police officers at the Rakiraki Police Station on the 14th March 2014.

13. The evidence of Special Sargent Solomone Nainima that he is closely related to 1st and 2nd accused was never challenged. Nainima vehemently denied that the Accused were assaulted at the Rakiraki police Station. Nainima's denial that his close relatives were assaulted at the police station strongly supports the version of the Prosecution.
14. The Counsel for 1st and 3rd Accused cross-examined the police officers on the basis that the Accused were brutally assaulted in a room behind the Rakiraki police Station. Police officers who had served and is serving currently at the Rakiraki Police Station all testified that there was or is no separate room behind or beside the Rakiraki Police Station. They said that the only building behind the Police Station is the one that runs the court house of Rakiraki.
15. According to the accused, brutality with which they were treated included torture practices such as jumping on the body, beating with 2x4 wooden sticks, making them to eat bongo chillies etc. However, none of them failed to support their claims.
16. Defence called Sakiusa Tukana to support the version of the 2nd Accused. According to Tukana, he was in police cell when the 1st on 2nd accused were brought to the police station on the 13th March 2014. He said that he saw black marks and rashes on 2nd accused's ribs and a bleeding on his lips. He also said that he 1st accused limping after being beaten by police officers.
17. It is clear that the 1st accused was arrested on the 15th March 2014. The Court can't believe Tukana's evidence that 1st accused was also taken to the police cell with the 2nd accused either on the 13th or 14th March, 2014 because the 1st accused was arrested only on the 15th March. Tukana is not happy with the treatments he had received from police officers and the imprisonment he had later received as a result of police investigations. He came to give evidence from the same prison

where the 2nd accused is also serving. In this context I am not inclined to accept Tukana as an independent witness.

18. According to the evidence of the 3rd Accused, he had gone through the same ordeal at the hands of the police officers before the interview. He said he was assaulted, kicked on his ribs, jumped on top of him and brutally assaulted in a room at the Rakiraki Police Station. He said he fainted as a result. The officer poured water and when he regained consciousness, he was further assaulted brutally by the same officer. Quite surprisingly, according to him, he had received only one injury on his chin. There is no evidence that he had complained to the Magistrate about his injuries or of police assaults. 3rd accused concedes that he managed to maintain his denial of the allegation despite police brutality. Apparently he had resisted the pressure. However, in his grounds of *voir dire* filed through his Counsel, the 3rd accused states that he made a confession under duress because he could not bear the pain.
19. Evidence adduced by the Defence was inconsistent and implausible. Defence failed to create any doubt in the Prosecution's evidence. The Court is unable to accept the evidence of the Defence that the accused were assaulted, treated unfairly and that they had succumbed to intimidation and gave interviews involuntarily. I reject the evidence of the Defence.
20. There is evidence that all three Accused had been arrested and cautioned properly. I am satisfied that they had been afforded their rights guaranteed to an accused under the Constitution. There is no acceptable evidence that they were oppressed or treated unfairly. I am satisfied beyond reasonable doubt that the Accused had made confessional statements voluntarily.
21. Therefore, I hold that the cautioned interviews and charge statements of the accused are admissible and can be led in evidence at the trial.



Aruna Aluthge

Judge

AT LAUTOKA

On 6th July, 2018

Counsel: Office of the Director of Public Prosecution for Prosecution
Office of the Legal Aid Commission for 1st, and 3rd Accused
Vananalagi Lawyers for 2nd Accused