

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 403 OF 2016S

STATE

vs

1. ASESELA NIUBASAGA

2. SAMISONI WAQAVATU

Counsels : Mr. S. Shah for State
Mr. J. Daurewa for Accused No. 1
Mr. N. Tuifagalele for Accused No. 2

Hearings : 2, 3, 4, 5, 8, 9 and 11 October, 2018

Summing Up : 12 October, 2018

Judgment : 12 October, 2018

JUDGMENT

1. The three assessors had returned with a unanimous opinion finding both accuseds guilty as charged.
2. Obviously, the assessors had accepted the prosecution's version of events. It meant they had also accepted the prosecution's witnesses' evidence.
3. I have reviewed the evidence called in the trial and I have directed myself in accordance with the summing up I gave the assessors today.
4. The assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.

5. Assessors are there to assist the trial judge come to a decision on whether or not the accuseds were guilty as charged. Their opinions are not binding on the trial judge. However, their views carried weight in that they represent the public's view, and that meant their opinion, at times, must be respected.
6. The prosecution's case largely depended on the acceptance or otherwise of the two accuseds' alleged confessions. I have heard the prosecution's witnesses' evidence on the same. I have also heard the two accuseds' version of events on the same. The police said, they did not assault or threaten the two accuseds while in their custody. The two accuseds said they were repeatedly punched and kicked by the police officers. At the end of the day, I had to look at what Doctor Singh and Doctor Prasad said. Both doctors said the two accuseds suffered no injuries that is major, while in police custody. Doctor Prasad said, given the two accuseds' complainants of assault by police officers, major injuries should be present on their bodies, not abrasion.
7. I have come to accept the doctors' evidence, that both accuseds suffered no major injuries, while in police custody. Doctor Singh said he found no injuries on both accuseds on 6 November 2016. Doctor Kumar only found abrasion on Accused No. 1. According to Doctor Prasad, an abrasion is not a cut. Given the punches they allegedly received from police, I expected major injuries on their bodies. None was found.
8. The doctors' views had led me to accept that both accuseds voluntarily confessed to the police when caution interviewed on 3 and 4 November 2016. I accept that they signed their interview notes out of their own free will. I accept they gave their confessions voluntarily to the police when caution interviewed, and the same were true.
9. On the basis of the above, I agree with and accept the 3 assessors unanimous guilty opinion. I find both accuseds guilty as charged and convict them accordingly.
10. Assessors thanked and released.




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JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused No. 1 : **Legal Aid Commission, Suva**
Solicitor for Accused No. 2 : **N. Tuifagalele, Barrister and Solicitor, Suva**