

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 162 OF 2018

STATE

-v-

- 1. ILISONI VOCEA**
- 2. DEMISI ATULAGA**
- 3. SAIMONI TURAGAVOU**
- 4. JOSEFA RAKAI**

Dates of Hearing: 30 September 2019, 1 October 2019, 14 October 2019,
15 October 2019, 17 October 2019, 18 October 2019

Date of Ruling: 21 October 2019

Counsel: Ms. Semisi for Prosecution
Ms. Ratidara for 1st Accused
Ms. Hazelman for 2nd Accused
Ms. Manulevu for 3rd Accused
Mr. Chang for 4th Accused

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the caution interview and the charge statement of each accused recorded at the Samabula 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 suspect 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 having violated 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 grounds of *voir dire* and challenged the admissibility of their caution interviews and charge statements on the basis that they were obtained under unfair circumstances, using police brutality and also violating their rights guaranteed under the Constitution.
6. Altogether 11 police officers were called by the Prosecution to prove that accused had given caution statements and charge statements voluntarily. They all said that accused were never oppressed, assaulted or threatened during arrest or while they were in police custody and that the caution interviews and the charging took place lawfully and in a fair manner.
7. For reasons recorded hereunder, I am not inclined to believe that the evidence of the police officers and the ex-police officers are truthful.
8. Except the 3rd Accused, all other accused in their respective testimonies described in detail how they were either assaulted or threatened during their arrest and whilst being in police custody.

Analysis

9. At the outset, I would like to make some general observations in respect of all the interviews before proceeding to analyse the evidence with regard to the grounds raised by each accused. The defence counsel in the process of cross examination, strenuously argue that their clients were heavily prejudiced by the unfair procedure followed by the police officers in conducting the interviews.
10. The police officers involved in the interviews appear not to have taken the Fiji Police Force Standing Orders (FSO), and the Judge's Rules, the rules of procedure that are in place to ensure the fairness of the interview process, seriously. Except in one charge, all other interviews have been conducted without a witnessing officer being present. The explanation given by the officers is that they lacked manpower. Although there may be situations where manpower is lacking in the police station to attend to the interviews, interviews without witnessing officers should not be the norm but rather the exception.
11. I am not convinced that the Samabula Police Station, which is situated in the heart of the city, lacked manpower to ensure the presence of a witnessing officer when it is evident that the raids have been conducted with the participation of a large number of police officers. In the crime prevention business, conducting raids is as importance as the fairness of the interview process, especially in cases where the sole reliance is placed on the confessions. It is not a good excuse for the police officers to say that they had to rush without a witnessing officer to meet the 48 hour constitutional deadline in a jurisdiction where the extension of detention time is permitted, where necessary, under the Constitution itself and by orders of the High Court. The failure on the part of the police officers to adhere to this rule leaves the court in doubt whether they had conducted the interviews in a fair and transparent manner.
12. The FSO guideline that, upon the conclusion of an interview in a serious case, the interviewee should be presented to the supervising officer enabling the interviewee to make complaints, if any, has been observed in breach. The investigating officer Munilesh stated that he received no complaints from any of the accused. It is the duty of the interviewing officer to present the interviewees to the investigation officer or the supervising officer for complaints.

13. The station diary entries show considerable discrepancies and are in conflict with the interview notes thus raising doubts about the credibility of the interview process. The explanation that the station diaries are maintained by station orderlies and that they had erred in recording the times has little weight. It is the responsibility of the interviewing officer to ensure that the times recorded in the record of interview are accurate.
14. There were instances where the caution had not properly been put to the accused after the suspensions of the interviews and before or after scene reconstructions. The investigating officer's assertion that the caution administered to a suspect at the beginning of the interview is effective right throughout the interview is not acceptable. Such a procedure can be prejudicial to the accused and also violates the FSO's and the Judge's Rules.

1st Accused

15. The 1st accused Ilisoni Vocea had been arrested by a team comprised PC Satini and ASP Ryland upon a request received by the Samabula Police Station. Upon being arrested, Ilisoni had been taken to Samabula Police Station at around 10 p.m. PC Satini confirmed that officer Sukulu and other police officers started interrogation then and there. After keeping him there for more than an hour, he had been escorted to Totoga Police Station on the same night at 23.48 hours, (11.48) pm. This has been done when the interview was supposed to be conducted at the Samabula Police Station itself. There is no Station Diary entry as to why Ilisoni was escorted to another police station as late as close to midnight. The explanation given by the officers for the transfer was that there was no space to keep Ilisoni in the Samabula cell block. If that is the case, the transfer could have been done then and there. The officers failed to explain why Ilisoni was detained for more than an hour if there was no room in the Samabula cell block. This state of affairs reinforces Ilisoni's allegation that during this period he was taken to a room by Sukulu and DC Munilesh and threatened with harsh words to admit to the allegation and that the transfer was done 20 minutes after his wife had brought some money from home as a result of a forced confession.
16. The interview and the charge had been conducted on the following two days (18 & 19 April 2018). Admitted failure by PC Naikar to administer the caution during the scene reconstruction has caused prejudice to Ilisoni. I find that the ill-treatment Ilisoni had

received in the police custody prior to the interview, particularly the transfer done close to midnight to another police station, has been oppressive.

2nd Accused

17. The 2nd accused Saimoni had been arrested early in the morning (at around 5 am) from his house. Three police vehicles had been deployed for this simple raid and the time spent was 1 hour and 45 minutes. Sukulu, the police officer who effected the arrest failed to give an acceptable explanation why his team took nearly 1 hour and 45 minutes to complete the raid when it was a 15-20 minute drive from Samabula Police Station to Saimoni's house. The allegation Saimoni has leveled against the police is that the police interrogation started at a bus stop where he was threatened to admit to the allegation and assaulted and then pushed into the vehicle. The witness called on behalf of the 2nd accused confirmed the evidence of Samioni that he was assaulted at the Wairua Junction by the arresting team.
18. According to Sukulu, Saimoni was under the influence of liquor at the time of arrest. The evidence of Saimoni's father that the reason for arrest and caution was not put to Saimoni at the time of arrest can be accepted as Saimoni was heavily drunk at that time. Sukulu had later conducted the interview at 1.15 p.m. Before the interview a doctor has not been consulted to ascertain if Saimoni was sober and fit to be interviewed.

3rd Accused

19. The evidence of the arresting officer Salacieli Tabalailai is inconsistent thus implausible. According to Salacieli, Demesi was arrested at the Carnarvon Street at 3.10 am while he was under influence of alcohol. Demesi had been escorted down to Raiwaqa Police Station because the cell at Samabula Police Station was full at that time. However, when Samabula station diary entry was shown, Salacieli admitted that Demesi was first locked in the Samabula Police Station at 3.20 Hrs.
20. According to station diary entry No. 107, DC Manasa had commenced the caution interview of Demesi at 1614 Hrs. on the 22nd of April 2018, and suspended at 1647 Hrs (entry No.115) on the same day. DC Manasa admitted that as per the record of interview, by the time the interview was suspended at 1600 hours Demisi was not even in Samabula Police Station.

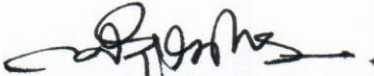
His explanation was that after the suspension of the interview at 16 hrs (4 pm), Demesi was escorted by some other officers to somewhere else. He admitted that the first part of the record of interview is not correct. It appears that Demesi had not been cautioned before the scene reconstruction. In light of this shaky and doubtful evidence of the prosecution, I would prefer to accept the version of Demesi that he was assault and threatened during the arrest and also in custody before and during the interview.

4th Accused

21. There is no dispute that, at the time of the interview, Joseva Rakai had injuries on his body. According to escorting officer, Josaia Soro, and the interviewing officer DC Manasa, Rakai had only scratch marks on both his hands. In contrast, the medical report tendered in evidence indicates that Rakai had injuries all over his body. DC Manasa had not even enquired about the scratch marks before the interview merely because the escorting officer had informed that Rakai had already been medically examined. He agrees that according to his observations, the injuries had caused discomfort to Rakai.
22. Rakai was not cautioned when he was taken for the scene reconstruction. The interview had been recommenced straight after the scene reconstruction without having a break and it had continued up until 1925 Hrs. The charging had started soon after the caution interview. It is unbelievable that DC Mafi who charged Rakai had not observed any injuries on Rakai.
23. The evidence of the arresting officer, Constable Rusiate, as to how Rakai had received injuries is implausible. According to Rusiate, Rakai at the time of arrest was unconscious and sleeping after consuming alcohol. He had first hand-cuffed Rakai and then woke him up. When he woke Rakai up, he had tried to run away with hand cuffs. It is not believable that a person who was drunk and hand-cuffed had offered such a resistance and managed to run off. As per the medical report, Rakai had complained to the doctor that he was assaulted by the police officers. Rusiate's admission that Rakai was not charged for resisting arrest suggests that no such resistance was offered by Rakai at the time of arrest.
24. Rakai has been arrested in connection with several offences allegedly committed in three different police areas. He has been transferred from one police station to another. He has been detained for four days in police custody without being produced before a judicial

officer. When shown the information, Rusiate admitted that as per the record of the interview, the name of the complainant in this case is not correctly recorded. The lapses and inconsistencies are considerable and they create a doubt in the version of events of the prosecutions' case.

25. For these reasons I reject the evidence of the Prosecution.
26. Except the 3rd accused, all the other accused gave evidence and described how they were either threatened or assaulted by police officers. I have no doubt that they were exaggerating things when they were giving evidence of assaults. Even if I were to reject evidence adduced by the defence, that will not change my mind as the burden is always on the Prosecution to prove that the answers were given voluntarily.
27. I am not convinced that the caution interview and charge statement of each accused had been given voluntarily. Prosecution failed to prove its case and discharge the burden beyond reasonable doubt. I hold the caution statements and the charge statements in respect of all the accused to be inadmissible in evidence at the trial.



Aruna Aluthge
Judge

At Suva

21 October 2019

Counsel:

- **Office of the Director of Public Prosecution for State**
- **Legal Aid Commission for Accused**