

THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 076 OF 2018LAB

STATE

V

SAIYAD ALI

**Counsels : Ms. A. Vavadakua for State
Ms. K. Boseiwaqa and Mr. J. Prasad for Accused**

Hearing : 16 December, 2019

Ruling : 16 December, 2019

Written Reasons: 23 December, 2019

WRITTEN REASONS FOR VOIR DIRE RULING

1. In this case, the accused was charged with “arson”, contrary to section 362 (a) of the Crimes Act 2009. It was alleged that on 13 October 2018, at Seaqaqa in the Northern Division, he willfully and unlawfully set fire to the complainant’s farm house.
2. In the course of the police investigation, the accused was caution interviewed by the police on 13 and 14 October 2018 at Seaqaqa Police Station. During the caution interview, it was alleged that the accused admitted the offence to police.

3. On 16 December 2019, the accused, through his counsels, challenged the admissibility of his caution interview statement in a voir dire. The defence alleged that the police forced the alleged confession out of the accused, and asked that the same be ruled as inadmissible evidence.
4. The prosecution called two witnesses, both police officers. The accused gave sworn evidence. Altogether, there were three witnesses, on whose evidence the court will have to make a decision. After listening to the parties closing submissions, I ruled the caution interview statement as admissible evidence, and I said I would give my reasons later. Below are my reasons.
5. 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** 91980) 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....”
6. I have carefully listened to and considered the evidence of all the prosecution and defence’s witnesses. I have carefully examined their demeanors when they were giving evidence in court. I have carefully considered the parties’ closing submissions.
7. The voluntariness of the caution interview statement and the fairness of police conduct was disputed by the parties. The accused said the police repeatedly punched his stomach 6 times. He was scared. Accused said, he reached class 4 education and didn’t understand English. The interview was done in English. The police denied assaulting the accused. They said,

accused understood English, and asked to be interviewed in English. During cross-examination, accused admitted he didn't complain to the Magistrate Court or High Court of any police assault.

8. After considering both the prosecution and defence's case, I came to the conclusion that the accused gave his interview statements to the police voluntarily and out of his own free will. On the evidence, I also found that the police were not unfair to the accused, while he was in their custody.
9. The above were the reasons why I ruled the accused's caution interview statements as admissible evidence. I said the acceptance or otherwise of the accused's interview statements, at the trial proper, will be a matter for the assessors. I rule so accordingly.




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Labasa**
Solicitor for the Accused : **Office of the Legal Aid commission, Labasa**