

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 300 OF 2017S

STATE

VS

NACANIELI BAKATA

Counsels : Mr. E. Samisoni for State
Accused in Person

Hearings : 21 and 25 March, 2019

Ruling : 26 March, 2019

RULING ON VOIR DIRE

1. The accused presently faced the following information in the Suva High Court:

*AMENDED INFORMATION BY THE
DIRECTOR OF PUBLIC PROSECUTIONS*

NACANIELI BAKATA is charged with the following offences:

[Count 1]

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311 (1) (a) of the Crimes Act of 2009.

Particulars of Offence

NACANIELI BAKATA with others on the 9th September 2017 at Sigatoka in the Western Division, in the company of each other, robbed RITESH PRASAD of \$1,520.00 cash, a silver & gold TITAN brand watch, a silver TITAN brand watch (round face shape), a Cool Water brand cologne for Men, a laptop bag containing a HP brand laptop, a SEAGATE brand Hard Drive, a smart watch, 2 Samsung Galaxy tablets, a Samsung Galaxy tablet, a red VIDO mobile phone, a black Nokia mobile phone, a Black Samsung S2 mobile phone, a white pocket wi-fi; a Green Tea brand perfume, and Elizabeth Arden, a Toshiba brand

USB, a Toshiba brand USB, x2 Santorum brand USB, an Oakley brand sunglass and a Toyota Fielder vehicle registration number FP 846 the property of RITESH PRASAD.

[Count 2]

Statement of Offence

AGGRAVATED ROBBERY; *Contrary to section 311 (1) (a) of the Crimes Act of 2009.*

Particulars of Offence

NACANIELI BAKATA with others on the 9th September 2017 at Sigatoka in the Western Division, in the company of each other, robbed DEVINA DEVIKA DARSHANI of a HP brand laptop, x2 Samsung Galaxy tablets, a white Samsung S2 smart phone, a bracelet, gold bangles and an 18 carat pair of earrings the property of DEVINA DEVIKA DARSHANI.

2. It was alleged that the accused with others, on 9 September 2017, at Sigatoka in the Western Division, broke into the above named complainant's house, and violently robbed them of the items mentioned in count no. 1 and 2 above.
3. In the course of the police investigation into the above, the only evidence the police managed to get against the accused was an alleged confession. It was the prosecution's case that the police caution interviewed him on 23 September 2017 at Sigatoka Police Station, and he allegedly confessed to the above crimes. The accused challenged the admissibility of the above alleged confession in a voir dire on 21 and 25 March 2019.
4. The prosecution called three witnesses, all police officers. They were PC 3313 Josua Cakausesse (PW1); Sergeant 1758 Meli Yauvoli (PW2) and DC 4222 Viliame Ugenge (PW3). PW1 allegedly caution interviewed the accused, while PW2 allegedly witnessed the same. PW3 formally charged the accused on 24 September 2017. The accused (DW1) was the only witness for the defence. He called no other witnesses. Altogether, there were four witnesses, on whose evidence the court will have to make a decision.
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 demeanours when they were giving evidence in court. I have carefully considered the parties' closing submissions.
7. The central dispute in this voir dire between the prosecution and the defence was whether or not the alleged accused's police caution interview statements, which was tendered as Prosecution Exhibit No. 1, was really the accused's, given that his signature was not on the statements. In most legal matters, to claim ownership of legal written statements, it is often essential and sometimes mandatory to put someone's signature to the same. For example, when police officers gather witnesses' statements, when investigating a crime, it was often necessary and sometimes mandatory to get those witnesses' signatures attested to their statements. This legally affirmed that the statement belong to the witness, and the witness believe the same to be true.
8. In this case, PW1 said he caution interviewed the accused. He said, he gave him his legal rights, formally cautioned him and gave him the standard breaks and rest. PW1 said, he asked the accused 68 questions and the accused gave 68 answers. PW1 said, PW2 witnessed the caution interview. PW1 said, neither him, nor PW2 or any other police officer assaulted, threatened or made promises to the accused, while he was caution interviewed and while he was in their custody. However, PW1 said, the accused refused to sign the caution interview statements. PW2, when he gave evidence, confirmed the above as a witnessing officer. However, he said, the accused refused to sign the caution interview statements because he wanted to defend himself in court.
9. I had read the caution interview statements, and I agree with the prosecution's verbal submission that, on the documents itself, if the questions and answers 43 to 58 are to be accepted, it would amount to the accused having allegedly confessed to the crimes. However, were the statements his? For the rule in Ganga Ram & Shiu Charan v Reginam (Supra) to apply, the statement in the alleged caution interview must first be taken to belong to the

accused. The accused (DW1), in his sworn evidence, denied that the caution interview statements were his, simply because he said, he did not sign the same. The statements showed that his signatures were not on the same. The prosecution said, through PW1 and PW2's evidence that, the statements were the accused.

10. The court asked the witness during cross-examination why they did not video-taped the interview to prove that it was the accused's statements. They said, they had no video recorder in the police station. In my view, in a case of this type, a video recording of the caution interview was absolutely essential to remove any doubt that it was the accused's statement, even if he refused to sign the same. Without the accused's signature on the caution interview statements, and without a video recording of the same showing the accused giving his verbal statements under caution, there was a reasonable doubt that the interview statements was that of the accused.
11. When considering the whole evidence, I am led into a reasonable doubt on whether or not the accused's alleged caution interview statements were really his, given that he had not signed the same. This is so even when PW1 and PW2 signed the caution interview statements. Had the caution interview been video-taped and the accused shown to be giving his verbal statements on tape, getting a written signed statement from the accused would not be essential, because his tape verbal statement would be enough. A tape verbal confession, would be just as powerful, as a signed written caution interview confession.
12. Because of the above, I rule the accused's alleged confession as contained in Prosecution Exhibit No.1, be declared as inadmissible evidence, and as such, cannot be used in evidence in any trial against the accused. I rule so accordingly.



Salesi Temo
JUDGE

Solicitor for the State : **Office of Director of Public Prosecution, Suva.**
Solicitor for Accused : **Accused in Person.**