

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 013 of 2017**

**STATE**

**vs.**

- 1. NIKO BALEIWAIRIKI**
- 2. ERONI RAIVANI**

**Counsel:** Ms. S. Serukai for the State  
Mr. E. Koro for Accused 1  
Ms. L. Manulevu with Ms. P. Mataika for Accused 2

**Date of Hearing:** 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> March 2019

**Date of Ruling:** 22<sup>nd</sup> March 2019

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## **RULING**

**[Voir Dire]**

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### **Introduction**

1. The second accused challenges the admissibility of his caution interview in evidence on the following grounds, *inter alia*;

1. ***THAT*** *the accused was assaulted, misled, intimidated and pressured to admit the offence by the arresting officers, interviewing officer and police officers passing by where the caution interview was held. This had unfairly put the accused in a very awkward position causing him not to think rationally and was scared.*

2. **THAT** *the accused was taken up to Colo-i-suva through Sawani then to Nausori by those Police Officers who had arrested him from his home in Lokia village and whilst on this prolonged journey he was sworn at, intimidated and was even told that he will be thrown down the hill in their (police) plot to scare the accused and which they actually achieved.*
3. **THAT** *the accused was intimidated by one of the interviewing officers (D/Cpl. 3541 Isikeli Rokodreu) that the Police have a strong case against him and that his other 2 co-accused had implicated him punching the victim several times which led to his death.*
4. **THAT** *the accused was lured by the interrogators, especially those that were roaming around the Crime office to admit the offence so as to fast tracked the investigations.*
5. **THAT** *being the first offender going through scary moments with Police since his arrest, the accused was ignorant to the legal process and was admitting to everything he was advised or ordered to say and to which he does not fully understanding the ramifications of the responses he had uttered.*
6. **THAT** *most (if not all) of the questions asked were leading questions framed by Interviewing Officer (I/O) in an intimidating way where the accused was not left with any options but to respond according to what the I/O suggest be it in the positive or negative (yes or no) especially Questions 102, 103, 104, 196 and 213.*
7. **THAT** *most of the written responses in the caution interview were framed by the I/O upon the accused's yes or no answers especially Questions 102, 103, 104, 196 and 213.*

8. **THAT** *the whole case scenario had been twisted by the police in their interrogations tailored to illustrate that the accused was punching the victim more than 10 times as in Questions 102, 103, 104, 196 and 213 when actually the accused had never thrown a punch on the victim.*
9. **THAT** *the accused was framed and blamed to have sustained his swelling right hand from punching the victim as per Questions 102, 103, 104, 196 and 213 of his caution interview statements when the truth was that the handcuff had caused the swelling when he was dragged around forcefully by the arresting officers, the I/O and others that were part of the arresting team up to his caution interview.*
10. **THAT** *for any kind of confession statements or assumptions found in the caution interview which may incriminate the accused, the same was obtained through deceits citing the mistaken belief impressed on the accused by the investigating officers that being a first offender he will obtain mercy from the Court if he confess, as in paragraph 4 above.*
11. **THAT** *except for the I/O and the Witnessing Officers whose names appear on the caution interview statement, the accused does not know the names of the other police officers that dealt with him during his arrest up to his first Court appearance.*
12. **THAT** *the said caution interview statement(s) of the accused cannot be admitted as evidence and this honourable Court must not be allowed to be led by such compromising and misleading confession statements.*

- Hence, the trial within a trial (voir dire) hearing commenced on the 18<sup>th</sup> March 2019 and concluded on 20<sup>th</sup> March 2019. The prosecution presented the evidence of four witnesses and the second accused gave evidence for the defence. Having carefully considered the evidence presented by the parties, I now proceed to pronounce my ruling as follows.

### **The Law**

- The Fiji Court of Appeal in **Shiu Charan v R (F.C.A. Crim. App. 46/83)** has discussed the applicable test of admissibility of caution interview of the accused person in evidence at the trial. The Fiji Court of Appeal in **Shiu Charan (supra)** held that:

*“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 or 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** (1914) AC 599. **DPP v Pin 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** (1980) AC 402, 436 @ c - E." (**State v Rokotuiwai** - [1996] FJHC 159; HAC0009r.95s (21 November 1996).”*

- The Fiji Court of Appeal in **Fraser v State ([2012] FJCA 91; AAU24.2010 (30 November 2012))** held that:

*“The court shall not allow a confession to be given in evidence against him unless the prosecution proves beyond reasonable doubt that the confession was not obtained (a) by oppression of the person who made it*

*(b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in consequence thereof.”*

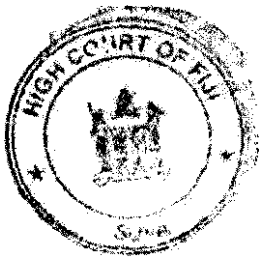
5. The test enunciated in **Shiu Charan (supra)** and **Fraser (supra)** constitutes two components. The first is the test of oppression. The court is required to satisfy that the statement in the caution interview had been taken without any form of force, threats, intimidation, or inducement by offer of any advantage. The second component is that, even though the court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation or inducement, it is still required to satisfy that not any general grounds of unfairness existed before or during the recording of the caution interview.
6. It is the onus of the prosecution to prove beyond reasonable doubt that the caution interview of the accused was recorded voluntarily and under fair and just circumstance.

### **Analysis**

7. The main contention of the second accused during the hearing was that he was assaulted, intimidated and threatened by the arresting officers while he was escorting to the Nausori Police Station after he was arrested on the 4th of January 2017. He claims that the police had taken him to Sawani, Colo-i- suva instead of taking him directly to the Police Station. They have then slapped, intimidated, threatened him forcing to admit the offence. The second accused further claimed that he was not given any dinner on the 4th of January 2017 and breakfast on the 5th of January 2017. He said that he was weak and hungry when the interview recommenced on the 5th of January 2017. Moreover, the second accused alleged that he was threatened by Sgt. Isikeli during the recording of the caution interview.
8. Cpl. Sevuloni and IP Elisa in their evidence denied that they took the accused to Sawani. They explained the procedure they adopted during the arrest and the route that they took in order to escort the accused to the Police Station. According to the medical examination, that the second accused had before the recommencement of the caution interview on the

5th of January 2017 the accused appeared clam. The doctor had not found any mark or injuries on the accused, apart from his swollen right hand. The accused said that swollen hand was caused by an accident that he met with on the 31st of December 2016, when he went to collect firewood. I accordingly find the accused was not in a weak and uncomfortable condition when the caution interview was recommenced on the 5th of January 2017.

9. In view of these reasons discussed above, I find that the second accused had given his answers in the caution interview voluntarily and it was recorded in a fair and just manner. Accordingly, I hold that the caution interview of the second accused is admissible in evidence.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe".

R.D.R.T. Rajasinghe  
**Judge**

At Suva  
22<sup>nd</sup> April 2019

Solicitors  
Office of the Director of Public Prosecutions for the State.  
Koroi Law for the 1<sup>st</sup> Accused.  
Office of the Legal Aid Commission for the 2<sup>nd</sup> Accused.