

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 338 OF 2017S

STATE

VS

NIKO ROKARA LEVULA

Counsels : Ms. L. Bogitini for State
Accused in Person

Hearings : 11 and 12 February, 2019

Ruling : 12 February, 2019

Written Reasons: 19 February, 2019

WRITTEN REASONS FOR VOIR DIRE RULING

1. The accused was charged with "burglary", contrary to section 312 (1) of the Crimes Act 2009 (count no. 1); "rape", contrary to section 207 (1) and (2) (a) of the Crimes Act 2009 (count no. 2); "sexual assault", contrary to Section 210 (1) (a) of the Crimes Act 2009 (count no. 3) and "aggravated robbery", contrary to section 311 (1) (b) of the Crimes Act 2009 (count no. 4). It was alleged that on 5 November 2017, at Nasinu in the Central Division, the accused burgled the complainant's residence, raped her and violently stole her properties, as itemized in count no. 4.

2. During the police investigation, the accused was caution interviewed at the Valelevu Police Station, where he allegedly admitted the above crimes to police. In a voir dire on 11 and 12 February 2019, the accused challenged the admissibility of his police caution interview statements.
3. The prosecution called two police officers, that is, DC 4581 Verenava Sabua (PW1) and Detective Corporal 1853 Luke Lewabeci (PW2). PW1 caution interviewed the accused, while PW2 witnessed the caution interview. The accused (DW1) was the only witness for the defence. He called no other witnesses. Altogether, there were three witnesses, on whose evidence, the court will have to make a decision.
4. 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 of 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....”**
5. 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.
6. The dispute between the prosecution and the accused in the voir dire hearing was typical of most voir dire trials. The accused said the police repeatedly assaulted him while he was in their custody. He said, the police gave him 30 hard punches. He said, he was frightened and

scared. As a result, he confessed to the police. He said, he did not give his caution interview statements voluntarily, and they were given without his own free will.

7. The police witnesses said exactly the opposite. They said, the accused was formally cautioned and he was given his legal rights. They said, he co-operated with the police during the interview. They said, they did not assault or threaten him, nor made false promises to him, while he was in their custody. They said, the accused gave his police caution interview statements voluntarily and out of his own free will.
8. After looking at all the evidence, I accepted the prosecution's witnesses' version of events, and ruled the accused's caution interview statements as admissible evidence. However, I said, the acceptance or otherwise of the accused's alleged confessions, will be a matter for the assessors at the trial proper.
9. The above were the reasons for my ruling on 12 February, 2019.



Salesi Temo
JUDGE

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