

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 447 OF 2018S

STATE

Vs

SEKOVE VADEI

Counsels : **Mr. N. Sharma for State**
Mr. J. Korotini for Accused

Hearings : **22 and 23 September 2020.**

Ruling : **23 September, 2020.**

Written Reasons : **31 December, 2020.**

WRITTEN REASONS FOR VOIR DIRE RULING

1. In this case, the accused was charged with the following information:

“Statement of Offence

AGGRAVATED ROBBERY: *Contrary to Sections 46 and 311 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

SEKOVE VADEI, in the company of others, on 16 November 2018, at Lami in the Central Division, stole 02 Samsung phones, 01 black iPhone, 01 Vodafone modem, 01 pouch of jewelry containing 02 pairs of Swarovski earrings, 01 pair pearl earrings, 01 Gaine and Stone ring, 01 yellow stone ring, 01 diamond and gold pendent, 01 Westpac Debit card, 01 wallet containing \$200.00 cash, 01

pair of sunglasses, 01 red key holder containing 04 keys and 01 car alarm key, and 01 Jacks of Fiji Reward Card from MARYANN ELENOA MAAFU-MOSS and immediately before stealing from MARYANN ELENOA MAAFU-MOSS, used force on her.”

2. On 26th November 2019, the accused pleaded not guilty to the above charge. In other words, he denied the allegation against him. The prosecution alleged that, he and others, on 16 November 2018, at Lami in the Central Division, broke into the complainant's apartment and violently robbed her of her properties, as itemized in the charge.
3. During the police investigation, the prosecution alleged that he confessed to the police about the above offence, when cautioned interviewed at Lami Police Station on 16 and 17 November 2018. The police alleged that the accused gave his above confession voluntarily and out of his own free will. The accused, on the other hand, denied the above. He alleged the police forced the confession out of him, by repeatedly threatening and assaulting him, while he was in their custody.
4. In a voir dire hearing on 22 and 23 September 2020, the accused challenged the admissibility of his caution interview statement. The prosecution called five witnesses, all police officers. The defence called one witness, that is, the accused himself. Altogether, there were six witnesses, on whose evidence, the court will have to make a decision. I heard the witnesses on 22 and 23 September 2020. After listening to their evidence and after carefully considering their closing verbal submissions, I ruled the accused's caution interview statement as admissible evidence and said it may be used as evidence in the trial proper. I said, the acceptance or otherwise of the caution interview statements, will be a matter for the

assessors. I said, I would give my written reasons on notice 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** (1980) 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. The voluntariness of the alleged confession, and the fairness in police conduct while the accused was in police custody was contested in this case. All the police officers appeared to be saying that the accused was given his rights, his right to counsel, was given the breaks and meals, while in police custody. The police witnesses said they did not assault or threatened him to confess while he was, in their custody. They said, they treated him well and he gave his caution interview statements voluntarily and out of his own free will.

7. The accused, on the other hand, said exactly the opposite. He said, when he was arrested at Tikaram Park by police, they repeatedly assaulted him by punching him and hitting him with a 4 x 2 wooden timber. He said, they later took him in a police vehicle to Lami Police Station. In the Lami Police Station, he said, he was put in a wet cell. When caution interviewed by police, he said, he was repeatedly assaulted by police and they threatened to kill him. As a result, he said, he allegedly confessed to the crime. He said, he did not voluntarily confess to the crime, and the alleged confession was not true.

8. Having considered both parties' version of events, and after carefully examining the witnesses' demeanors, I was persuaded to accept the prosecution's version of events. I found that the accused gave his caution interview statements voluntarily and I found no unfairness in police conduct to him. I reject the accused's allegation that he was assaulted and threatened while in police custody.

9. The above were the reasons for my ruling on 23 September 2020.




Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**