

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 343 OF 2019S

STATE

VS

- 1. KILIONI VATUTAQIRI**
- 2. LEMEKI BALEITAVUA**

Counsels : **Ms. M. Konrote and Ms. M. Ramoala for State**
Ms. L. David for Accused No. 1
Ms. L. Ratidara for Accused No. 2

Hearings : **15, 16, 17, 20, 21 and 22 June 2022 [Voir Dire Hearings],**
22, 27 and 28 June 2022 [Trial Proper].

Judgment : **8 July, 2022.**

JUDGMENT

1. This case first started in the High Court on 18 October 2019. The first information was put to the two accuseds and another on 19 February 2020. They all pleaded not guilty to the same. The above information was amended on 13 June 2022. It was put to the two accuseds and another again. They all pleaded not guilty to the same. The information was again amended on 28 June 2022, and the same read as follows:

“Statement of Offence

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

Particulars of Offence

KILIONI VATUTAQIRI, LEMEKI BALEITAVUA and ANOTHER between the 6th day of September, 2019 and the 7th day of September 2019 at Pacific Harbour, in the Central Division, in the company of each other, stole 1x gold chain; 1x gold earring; 1x white J2 Samsung mobile phone; 2x bottles of whiskey; assorted keys; NZD\$25.00 and FJD\$500.00 from **CORRINE GWENDA ANGUS and GRAHAM ERNEST ANGUS** and immediately before stealing from **CORRINE GWENDA ANGUS and GRAHAM ERNEST ANGUS**, used force on them”.

2. Both the accuseds said they understood the charge and pleaded not guilty to the same. In October 2019, while the police were investigating the case, they caution interviewed both accuseds at the Pacific Harbour Police Post, between the 1st and 3rd October 2019. According to the police, when the two accuseds were caution interviewed by the police, they both confessed voluntarily to the police. They admitted, they were part of the group that violently robbed the elderly complainants of their properties, itemized in the information, between 6 and 7 September 2019, at their villa in Pacific Harbour. The police said, the two accuseds admitted the offence out of their own free will, and the same were true.
3. However, the two accuseds challenged the admissibility of their caution interview statements. However, Accused No. 1 said that the police, when they caution interviewed him on the 2nd and 3rd October 2019 at Pacific Harbour Police Post, fabricated his alleged confessions. Because his ground of challenge was that of police fabrication, a voir dire was unnecessary, as a matter of law. As for Accused No. 2, he said, the police forced the confession out of him. He said, they repeatedly assaulted him, swore at him and threatened him, while he was in their custody from 1st to 3rd October 2019. As a result, a voir dire was mandatory to decide the admissibility of his caution interview statement.

4. The voir dire was held from 15, 16, 17, 20, 21 and 22 June 2022. The following witnesses gave evidence for the prosecution:

- (i) PW1, PC 5244 Simone Basulu;
- (ii) PW2, PC 4610 Laisenia Naiwau;
- (iii) PW3, PC 6496 Torosi Metuisela;
- (iv) PW4, PC 5659 Taito Tuinicagi;
- (v) PW5, PC 5467 Timoci Waqanidrola;
- (vi) PW6, PC 5413 Tomasi Mawi;
- (vii) PW7, Temo Tuirabe;
- (viii) PW8, WPC 7270 Unaisi Waqaicece;

Accused No. 2 (DW1) gave sworn evidence in his defence, but called no supporting witness. The parties then made their closing submission. The court ruled Accused No. 2's police caution interview statement as admissible evidence, and said it would give its written detailed reasons later. Below are its 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. The contention between the prosecution and Accused No. 2 was typical of most voir dire proceedings. The prosecution's witnesses said, they did not assault, threaten or made promises to Accused No. 2 while he was in their custody. They said, they arrested him from his home at Raiwaqa on 1 October 2019. They then took him to Totogo Police Station, then to Navua Police Station. He slept in the cell at Navua Police Station. They then took him to Pacific Harbour Police Post. He was caution interviewed there on 2 and 3 October 2019. He was later formally charged and produced at Navua Magistrate Court on 3 October 2019. The police witnesses said they did not assault or threaten him while he was in their custody. They said, when caution interviewed and formally charged, Accused No. 2 was given all his legal rights, he was given the necessary rest and meals. They said, as a result, he gave his caution interview and charge statements voluntarily and out of his own free will.

7. Accused No. 2, on the other hand, said exactly the opposite. He said, when police arrested him on 1 October 2019, they handcuffed him and threatened him, while enroute from Totogo Police Station to Navua Police Station. He said, the police repeatedly assaulted and threatened him on the way. He said, the police threatened him to admit the offence. He said, the police took him to the Pacific Harbour golf course and repeatedly assaulted him and rubbed hot chillies on his scrotum, penis and anus. They also sprayed pepper spray on his face. He said, they repeated the above at Pacific Harbour Police Post, when he was interviewed and formally charged. He said, they also threatened to insert a broken rake handle up his anus. He said, he was so frightened that he confessed to the police when caution interviewed and formally charged. He said, he then admitted the allegation against him and signed the caution interview and charge statements.

8. The court had carefully listened to and considered all the evidence tendered by the prosecution and the defence. The court had carefully assessed the demeanour of all the witnesses. The police witnesses said, they did not assault or threatened the accused while he was in their custody from 1st to 3rd October 2019. The police caution interview officer said he did not assault or threatened the accused while he was caution interviewed. The accused said exactly the opposite. Accused No. 2 said the police repeatedly assaulted and threatened him while he was in their custody. In my view, the nature of the assaults by the police alleged against Accused No. 2 were of such serious nature, it was logical to expect to find some signs of bruises and/or injuries on Accused No. 2's body. In everyday life, if a person was assaulted in the way alleged by Accused No. 2, one would expect signs of bruises, injuries or broken bones on Accused No. 2. The court found no such evidence on Accused No. 2. Although the burden to prove their case beyond reasonable doubt was always on the prosecution in a voir dire, the evidential burden was also on the defence to show evidence of bruises and/or injuries to verify the allegation of assaults etc. No medical evidence was provided to verify the alleged assaults. Furthermore, when Accused No. 2 was produced before the Navua Magistrate Court on 3 October 2019, he made no complaints to the Court on the alleged police brutality. Neither did he complain to the High Court about the above on 31 October 2019, when he first appeared in the High Court.

9. After carefully considering all the evidence, the court found the prosecution's witnesses' evidence credible, and ruled that Accused No. 2's police caution interview statements were admissible evidence. Nevertheless, the burden to prove the accused's guilt beyond reasonable doubt was still on the prosecution, despite the above ruling.

10. The trial proper started on 22 June 2022. The following information was put to both accuseds, in the presence of their counsels:

“Statement of Offence

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

Particulars of Offence

KILIONI VATUTAQIRI, LEMEKI BALEITAVUA *between the 6th day of September, 2019 and the 7th day of September 2019 at Pacific Harbour, in the Central Division, in the company of each other, stole 1x gold chain; 1x gold earring; 1x white J2 Samsung mobile phone; 1 black Bluetooth speaker; 3x bottles of whiskey; assorted keys; NZD\$25.00 and FJD\$500.00 from **CORRINE GWENDA ANGUS** and **GRAHAM ERNEST ANGUS** and immediately before stealing from **CORRINE GWENDA ANGUS** and **GRAHAM ERNEST ANGUS**, used force on them”.*

11. They said, they understood the charge and pleaded not guilty to the same. The prosecution then opened her case. She then called the following witnesses.
- (i) PW1, Corrine Gwenda Angus, who gave evidence from New Zealand via “microsoft team”, an app similar to the “skype” app;
 - (ii) PW2, PC 5244 Simione Basulu;
 - (iii) PW3, PC 4610 Laisenia Naiwau;
 - (iv) PW4, PC 6496 Torosi Metuisela;
 - (v) PW5, PC 5413 Tomasi Mawi;
 - (vi) PW6, Temo Tuirabe;
 - (vii) PW7, PC 5659 Taito Tuinicagi;
 - (viii) PW8, Cpl 3525 Mataiasi Rokobiti;
 - (ix) PW9, PC 5467 Timoci Waqanidrola;
 - (x) PW10, WPC 4567 Maria Fane.
12. In the middle of PW10’s evidence, the prosecution filed another amended information, mentioned in paragraph 1 hereof. In the presence of their lawyers, both accuseds said they understood the charge and pleaded not guilty to the

same. PW10 later completed her evidence and the prosecution closed her case. Before closing their case, the prosecution submitted the following exhibits:

- (i) Prosecution Exhibit No. 1 – Accused No. 2’s Caution Interview Notes.
- (ii) Prosecution Exhibit No. 2 (a) – Accused No. 1’s Interview Notes (i-taukei)
Prosecution Exhibit No. 2 (b) – Accused No. 1’s Interview Notes (English)
- (iii) Prosecution Exhibit No. 3 – Accused No. 2’s Charge Statement.
- (iv) Prosecution Exhibit 4 (a) – Accused No. 1’s Charge Statement (i-taukei)
Prosecution Exhibit 4 (b) – Accused No. 1’s Charge Statement (English)
- (v) Prosecution Exhibit 5 – Accused No. 1’s medical report.

13. Both defence counsels, on behalf of Accused No. 1 and 2, and the prosecution agreed that, on the evidence so far laid before the court, there was a prima facie case against both accuseds. The court agreed and ruled accordingly. Through his counsel, accused No. 1 chose to give sworn evidence, in his defence. He chose to call no witness. Accused No. 2, through his counsel, chose to give sworn evidence and chose to call two witnesses.

14. The trial proper appeared to be a re-run of the voir dire proceeding for Accused no. 2. The main evidence against both accuseds appeared to be their alleged confessions in their police caution interview statements. As for Accused No. 1, he said, he was arrested at his home at Wailea Settlement on 1 October 2019. He said, the police took him to Raiwaqa Police Station. They told him, he was a suspect in an alleged robbery at Pacific Harbour. He said, the police punched him in the ribs and whacked him with a plastic bottle full of water. He said, they took him to Nabua Police Station and then to Navua Police Station. He said, the police threatened him to confess to the robbery allegation. He said, he told police he knew nothing about the allegation. He said, he was taken to the Pacific Harbour Police Post. He said, before he was caution interviewed, police rubbed hot chillies on his face, chest and body. He said, it was painful. He said,

because of the above he confessed to the above. Through his counsel, he chose not to challenge the alleged police brutality via a voir dire. He said, he was caution interviewed on 2 and 3 October 2019, at the Pacific Harbour Police Post, by PC 3525 Mataiasi. He said, he signed the interview notes under police pressure. The interview notes were tendered as Prosecution Exhibit 2 (a) (itaukei) and 2 (b) (English).

15. Accused No. 1 said, the police fabricated his answers in the above caution interview notes. He said the police prepared a charge statement for him and told him to sign. He said, he signed under pressure. The charge statements were tendered as Prosecution Exhibit No. 4 (a) (itaukei) and 4 (b) (English). In Question and Answer 9, Accused No. 1 admitted breaking into the complainant's house, at the material time. However, he alleged, the police fabricated the above. He said, between 6 and 7 September 2019, he was at home at Wailea Settlement all the time. In his caution interview statement [Prosecution Exhibit No. 2 (b)], the allegation contained in the information was put to him after Question 17. In Questions and Answers 27, 34, 41, 42, 43 to 65, Accused No. 1 admitted the above allegation.
16. As for Accused No. 2, he repeated what he said in the voir dire. Basically, he said the police beat his alleged confession out of him. He said, he was so afraid that he confessed to the police. He said, his confession was not given voluntarily and it was made without his own free will. He said, it was also not true. In his caution interview notes [Prosecution Exhibit No. 1], the allegation contained in the information was put to him after Question 18. In Questions and Answers 25, 28, 30, 31, 46, 47, 48, 49, 58, 59, 60, 61, 63 and 76, Accused No. 2 admitted the above allegation.
17. The court had carefully considered all the evidence put before the court. The court had carefully observed the demeanours of all the witnesses. As far as the

two accuseds' alleged confessions contained in their police caution interview statements were concerned, the court was of the view that the two accuseds did in fact make those statements. They both signed their caution interview notes and the same were counter-signed by the interview and witnessing police officers. They alleged assaults and unfairness on the police part. Neither of them complained to any senior police officers, the Magistrate Court or the High Court, on any alleged police assaults and any unfair police conducts. Although the State had the burden to prove the accuseds' guilt beyond reasonable doubt, there was no credible medical evidence to show any bruises or injuries suffered by the accuseds, as a result of the alleged repeated police assaults. When caution interviewed, their legal rights were given to them, and their meal and rest breaks were given to them. Furthermore, after examining all the evidence, it is the court's view that the two accuseds' confessions to the police were the truth. I find the prosecution's witnesses' evidence credible and I accept them. I accept the prosecution's version of events. I reject both accuseds' denials. I also find Accused No. 2's witnesses' evidence not credible. I reject both accuseds' assertion that they were somewhere else, at the material time.

18. Given the above, I find the prosecution had proven its case against both accuseds beyond reasonable doubt, and I find both accuseds guilty as charged.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused No. 1 : **Legal Aid Commission, Suva.**
Solicitor for Accused No. 2 : **Legal Aid Commission, Suva.**