

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 79 OF 2020

STATE

-v-

MOHAMMED MASUM

Counsel : Mr. A. Singh with Ms. S. Naibe for Prosecution
Accused in Person

Dates of Hearing : 17,18,19 April 2023
Date of Ruling : 20 April 2023

RULING ON VOIR DIRE

- 1 The State seeks to adduce into evidence the record of caution interview of the accused at trial proper.
- 2 The test of admissibility of all confessional statement made to a police officer is whether that was made freely and not as a result of threats, assaults or inducements made to the suspect by person or persons in authority. Further, oppression or unfairness also leads to the exclusion of the confession. Finally, where the rights of the suspects under the Constitution have been breached, this will lead to the exclusion of the confessions obtained thereby unless the prosecution can show that the suspect was not thereby prejudiced.
- 3 What I am required at this stage is to decide whether the interview was conducted fairly and whether the accused gave the statements voluntarily. If I find that the confession was obtained having violated his constitutional rights, then I can in my discretion exclude the interview.
- 4 The burden of proving voluntariness, fairness, lack of oppression, compliance with constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling, I have reminded myself of that.

5. The reproduce verbatim the grounds filed by the accused as follows:

- 1) That the caution interview statements were extracted through unethical, unconstitutional and improper methods or techniques used by the interviewing officers.
- 2) That the caution interview statements were taken or extracted in an atmospheric authority environment by the interviewing officer or the in charge officer.
- 3) That the caution interview statements were taken or extracted in a language that were not familiar to the Accused or Applicant because the Accused/Applicant was not able to read or write Hindi language as he is a born Bangladesh national.
- 4) That the Accused/Applicant was forced to sign the caution interview statements which was written in the Hindi language that the accused cannot understand, read or write.
- 5) That the Accused/Applicant was inflicted with fear by the Arresting and Interviewing Officers whilst being interviewed in an atmospheric authoritative environment.
- 6) That I was assaulted by Sergeant Kamal and my Interviewing Officer Mr Sonal from the Ba Police Station while I was in custody and during my caution interview.
- 7) That I was forced by the Interviewing Officer and other Officers to continue my caution interview in the Hindi language even though I cannot read or write the Hindi language.
- 8) That I requested my Interviewing Officer to interview me in the Bangladesh language as I am from Bangladesh but he slapped and said No and he continued in the Hindi language even though I am not from India and having no knowledge of the Hindi language.
- 9) That I have a medical report of proof of assault by the Arresting Officers. Sir, in regards to all the above mentioned grounds, I politely request through proper law to please help me as I am a Bangladesh national from Bangladesh with only knowledge of our Bangla language and no knowledge of Hindi or English language.

6. The summary of the evidence is as follows:

Dr. Jia Hing

7. Dr Hing is a MBBS qualified medical officer at Ba Health Centre with 8 years' of experience. On 21 April, 2020, he examined Mohammed Masum, a suspect in a murder case presented by police to the Ba Health Centre. The purpose of the examination was to see whether the patient had injuries after being interviewed by the police. He tendered the medical report he filled (PE1) after the examination of the patient on 21 April 2020. The patient did not speak English and seemed to understand Hindi so he needed a Hindi interpreter. Staff Nurse Sweeta interpreted the conversation into Hindi. The patient was calm, cooperative and he seemed comfortable. He examined the suspect's whole body with his consent. There was no bruises or injuries noted on suspect's body. The suspect did not complain of anything done to him and was satisfied with police treatments. The patient was fit and well to stand trial.

DC Timoci Ravia

8. Timoci is a Detective Constable stationed at Ba Police Station Criminal Investigation Department. On 18 April, 2020, he received instructions in relation to a suspected murder case when the station had received information from a carrier driver Jitendra. He followed the Jitendra to the crime scene at Lane 25, Rarawai with Corporal Jone, PC Mosese, PC Inia. Jitendra showed one Bangladeshi man named Masum who had hired him. Masum sought his assistance to load a drum to the carrier.

9. He asked Masum to open the door of the house he was renting. The landlord was assisting him in talking to Masum because he didn't understand what they were talking about. PC Mosese started searching inside the house where he found blood stains in a mattress. They suspected of a criminally activity and conduct a search around the area. In a nearby cane field, they found a bag with clothing tainted with blood stains and, further down, a dead body. He explained the constitutional rights, the right to remain silent to Masum with the help of his landlord and handcuffed him. He or any other police officer did not threaten or intimidate Masum during his arrest or transportation. At the Ba Police Station, the suspect was handed over to the uniform branch for him to be kept in custody. He received no complaint from

Masum. Masum had never lodged any formal complaint against him for assaulting. The accused opted not put any questions when his right to cross-examine the witness was explained.

PW No. 3 Sonal Singh

10. Constable Singh is the investigating officer of this case. He also interviewed the suspect Mohammed Masum at the Ba Police Station on 19 and 20 of April 2020. When he first met Masum just before 9 a.m. on the 19 April 2020, he appeared very quiet. Before commencing the caution interview, Masum was taken to Ba Health Centre for a medical examination because he complained about blisters on both of his palms. Masum told him that his friends who are the deceased in this case were torturing him by burning a pen in the candle and poking the pen on his palm. He or any other police officer never assaulted, threatened or intimidated Masum.
11. Masum was seen by Doctor Komal Andrew who prescribed an ointment for blisters. Sgt. Kamal bought the ointment from a pharmacy. Masum had applied that ointment to his blisters before the commencement of the interview. He conversed with Masum in Hindi language. Masum understood and was talking fluently in Hindustani language. Masum was served with his breakfast and he commenced the interview at 10.30 a.m. Masum appeared quiet and normal. He was fit to be interviewed.
12. Sgt. Kamal and Mahababul Islam were present at the interview room witnessing the interview throughout the interview and also at the reconstruction of the scene. The interview was conducted in question and answer format in Hindi language because Masum opted to be interviewed in Hindi. Masum signed to acknowledge that he agreed to be interviewed in Hindi at question No.4. The allegation against him was explained.
13. When the right to legal counsel was explained, Masum spoke to Mr. Patel from Suva on the phone for about 5 minutes. He did not wish to have a relative or friend to be present at the interview because his country man Mahababul Islam was already there.
14. During the interview, no one was present in the room other than the witnessing officers. Nobody forced Masum to give answers. No one assaulted, intimidated or threatened Masum

to admit to the allegations. Masum was given sufficient breaks to rest, use washroom and have his meals. Masum was given refreshments and meals and his rights including the Judges Rule No. 2 and the right to remain silent.

15. Sonal tendered the Hindi record of interview marked as PE 2A which has his signature and those of Masum, Mahababul Islam and Sgt. Kamal in each page. The interview was concluded on the 20 April 2020 at 10.20 pm. Upon completion the interview, he translated the record of interview into English. The English translation was tendered marked as PE2B.
16. During the caution interview, Masum mentioned about the second body. The interview was suspended for him to take officers to the scene and show where the second body was buried. After the scene visit, the interview was recommenced at 4.30 p.m. to be suspended for day one at 8 p.m. for the suspect to rest and have meals. Masum did not complain about anything when the interview was suspended.
17. Before the interview resumed for day two on 20 April 2020, Masum was escorted at 7.30 a.m. to Lautoka High Court to seek orders to extend the detention period to keep the suspect more than 48 hours in custody. Masum did not complain to the Judge about being assaulted, threatened or intimidated by Police Officers when he was produced before the High Court. When the extension was granted, Masum was taken back to Ba Police Station at 2.15 p.m. After giving time to rest, the interview recommenced at 2.40 p.m. The interview was suspended for a scene reconstruction at 3.10 pm. The reconstruction was visually recorded.
18. After the reconstruction of the scene, Masum was escorted back to Ba Police Station. At around 5.10 p.m. the interview was recommenced at 5.15 p.m. to be suspended at 8pm for the suspect to have his dinner. Masum was given a break at around 6.26 p.m. for his mouth swab to be taken for DNA analysis. With his consent, a mouth swab was taken after being explained the reason as to why the swab had to be taken. Next suspension was at 8 pm. for him to have dinner. The interview was concluded at 10.20 pm.
19. Upon completion, Masum signed the record of interview in each page on his own free will. No one put pressure on Masum to sign the record of interview. When asked whether Masum wished to read the interview, Masum asked him to read it to him. He commenced reading the Hindi version of record of interview at question 275 at 2135hrs and concluded at 2215hrs after

reading it for 40 minutes. Suspect did not want to make any changes to the answers. Masum signed the interview at the very end to acknowledge that the interview was read back to him and that he understood what was written there.

20. Masum never complained against anything or to any authority including the Magistrate when he was produced at the Ba Magistrate Court on the next morning (21st). He escorted Masum to the Ba Health Centre for a medical examination before he was taken to Court so that he could be medically examined and, if he wished, to complain about police harassments. Masum was treated like a human being and well looked after. His meals were provided on time. He was never assaulted, threatened, forced or inflicted fear by any officer during the interview, transportation or scene reconstructions.
21. Sonal Singh presented two compact discs that contains the video footages recorded during the scene reconstruction on 19 and 20 of April 2020 (D1, D2) and the English translation of the conversations that took place during the scene reconstructions. While the video was being screened in Court, Sonal read the contents of the conversation in evidence.
22. Upon completion of examination-in-chief, the accused exercised his right to cross examination. Under cross-examination, Sonal confirmed that, before the interview on 19 April 2020, the suspect had blisters on his palms and that he and Stg. Kamal applied the creams prescribed by the doctor. He conceded that the suspect din't know how to read and write Hindi. Mahabubul Islam was brought in not as an interpreter but merely as a witness.
23. Sonal denied changing the answers given by Masum. He said whatever the answers given by Masum were recorded. He denied having written what Masum did not say. Masum acknowledged by signing that he understood the contents when it was read back to him. He denied that Masum requested for a Legal Aid Counsel to be present at the interview. He denied that he had threatened and forced Masum not to complain to Lautoka High Court. He denied threatening Masum before he was taken to the crime scene.

Dr Komal Karishma Andrew

24. On 19 April, 2020 Doctor Andrew examined Masum Mohammed at Ba Mission Hospital when he was presented by Sgt. Sonal Singh. She tendered in evidence the report has had

prepared (PE4). She conversed with the patient in Hindi. She could not recall if the police officers were present during the examination. The patient was well, oriented to time place and person. According to the patient, he had been brought to Fiji under false pretenses that he would be working in Australia. The patient stated that the person who brought him had taken money from him and physically abused him by burning his palms. The patient stated that he felt safer with the police officers than he did with the person that he was living with.

25. As per her medical findings the patient had burn marks on his palms circular in nature, two on the left palm and seven on the right palm each about 0.75cm healing and dry. The injuries were not fresh. They were old superficial injuries. The patient had no other injuries. She prescribed the patient paracetamol and a tropical ointment for the burns. The examination was completed at 10.09 a.m.
26. Under Cross examination, Doctor Andrew agreed that she did not inspect the whole body of the patient by taking his clothes off as she did not receive any complaint from the patient that he had any other injuries. The injuries in the palms were not completely healed but they were drying and healing. Therefore she gave the cream so that the healing process could be faster. How long it takes for the wounds to be healed depends on how a patient treats them. If it gets infected it takes longer- otherwise it heals faster.

Inspector Kamal Goundar

27. On the 19 April 2020, when he was based at the Ba Police Station, he was instructed to be the witnessing officer of the caution interview of Mohammed Masum. His role was to ensure that the rights of the suspect were maintained and that the interview conducted fairly. Before the interview, Masum was medically examined at Ba Mission Hospital. Neither he nor DC Sonal was present at the medical examination room. After the medical examination, the caution interview was conducted by DC Sonal at the Crime Office of the Ba Police Station. He was present with Islam as witnessing officer right throughout the interview and also at scene reconstructions. He received no complaint as to the fairness of the investigation or any assaults or threats done to Masum by any police officer. Islam was asked to be present to ensure fairness of the interview as he is a Bangladeshi national. The interview was conducted and recorded in Hindi language because the accused opted to be interviewed in Hindi language.

Rights of an accused were given to Masum. Masum acknowledged that he understood the rights and the caution put to him. Masum spoke to Legal Aid lawyer Mr Patel on his phone.

28. Inspector confirmed that the suspect was given sufficient breaks, adequate time to rest and meals. No one assaulted, threatened or intimidated Masum to admit to the allegation. Masum was not assaulted, threatened or intimidated by anybody during scene reconstruction or transportation to the scene or to the Lautoka High Court. No complaint was received to that effect from Masum.
29. When the interview was concluded, the record of interview had been read back in Hindi to Masum by Sgt. Sonal for 40 minutes. What was read back is the exact things that Sonal and Masum were conversing during the interview. He denied that the interviewing officer had slapped Masum when he had requested that he be interviewed in Bengali language.
30. Under cross-examination, inspector Kamal denied demanding \$10,000.00 to release the suspect. He denied threatening or assaulting Masum if he were to complain to the doctor that he was assaulted. He denied that Masum had requested for a Legal Aid counsel to be present during the interview. He denied slapping Masum when he requested a Bengali interpreter. He denied that Masum was handcuffed during the interview. He denied that Masum showed things at the scene reconstruction according to his instructions. He denied applying cream on Masum's hand because Masum was handcuffed. He denied slapping Masum while shaving his beard.

Mahababul Islam

31. Islam is a Bangladeshi businessman residing in Fiji for the past 7 years on a business visa. He said he could speak Bangali, Hindi and English. Although he can understand Hindi, he cannot write or read Hindi. On 19 April, 2020 one Bangladeshi national named Yusuf asked if he could assist the police as a translator. He went to the Ba Police Station with Yusuf to assist the Police. When he started the conversation with the Police, Masum said that he could easily understand and talk in Hindi so that he didn't need a translator. Then the police officers asked him just assist them as a witnessing officer as it was lockdown period. He agreed and took part in the interview.

32. Sgt. Sonal Singh started the interview in regards to a murder case. He was present as a witnessing officer with Sgt. Kamal throughout the interview. The interview was conducted in Hindi because Masum said that he could properly understand and can talk in Hindi. Police officers never forced Masum to speak in Hindi language. Masum never refused to speak in Hindi and never wanted to speak in Bengali. Masum was given his rights, breaks and meals. Masum talked to a lawyer over the phone. Masum did not complain of any assault, threat or intimidation done to him by the police officers.
33. He understood what was being spoken by Sonal and Masum at the interview in Hindi. Masum was never handcuffed during the interview or at the scene reconstruction. Apart from himself, Kamal, Sonal and Masum, no other officer was present in the room. At the scene reconstruction that took place on 19th and 20th of April 2023 Masum was showing the places where the bodies were found and he described how everything was done.
34. Masum never complained to him of any assault, threat or force done to him by police officers. He did not see any assault or threat being done to Masum. Masum was conversing in Hindi very well with the officers. He never spoke to him in Bengali language. Masum did not complain that he was forced to speak in Hindi instead of Bengali. After writing each question and answer, Sonal explained in Hindi what he had written. Masum was just hearing what was being read. When Masum accepted and confirmed that he understood what was written, Sonal got them to initial the record. He was sure what was being read back was the same and correct thing that Masum stated to the police at the interview. He confirmed that the document before him (PE2A) is the same document that he had initialled and the one read back to Masum. Sonal or Kamal did not force Masum to sign the record of interview. He observed Masum to be a very strong and healthy person.
35. At the interview, no officer assaulted Masum. However, when he met Masum for the first time, he (Masum) said that when he first time called with the police they were punching. However, he was never present at that time. He saw Kamal applying an ointment in Masum's hand.
36. Under cross-examination by the accused, Islam admitted that he could not write or read Hindi. He signed each page because he understood what was being read back was the same words exchanged between Sonal and Masum. He witnessed the interview not as an officer but as a

neutral person. He heard what the conversation was about between Sonal and Masum, and the same thing Sonal was reading back to him so he didn't have any doubt to sign. He denied that, before the scene reconstruction, the police officers were teaching Masum what to tell and where to point. He could not say if Masum had injuries in his chest, because he was wearing a vest.

Analysis

37. The prosecution must prove beyond reasonable doubt that the caution interview was conducted fairly, guaranteeing accused's constitutional rights and that the answers were given voluntarily.
38. The arresting officer DC Timoci said that the accused was afforded his constitutional rights and that he was not assaulted, threatened, or intimidated during the arrest or transportation. The interviewing officer DC Sonal and the witnessing officer inspector Kamal said that the interview was conducted fairly guaranteeing suspect's constitutional rights and that the suspect gave the answers voluntarily.
39. I am satisfied that the evidence of police witnesses are consistent and reliable. The evidence of the police witnesses is consistent with that of Mahabubul Islam who had witnessed the entire interview and the two medical practitioners who had examined the suspect prior to and after the interview. Islam is a neutral lay witness. He has had no previous connections with police officers. His assistance had been secured through another Bangladeshi national known to police. Islam has no reasons to lie in court against his own countryman. The two medical practitioners should also be considered as independent witnesses whose evidence supported the version of the Prosecution.
40. According to the grounds filed by the accused, arresting officers had inflicted fear and sergeant Kamal and DC Sonal had assaulted the accused whilst he was in police custody and also during the caution interview. The accused did not give evidence to tell that the police officers assaulted or threatened him. That is his right. However, I have no reasons to reject the evidence of the prosecution witnesses which stood unimpeached.

41. The accused in his cross-examination did not put to DC Sonal that he was assaulted or slapped. Inspector Kamal denied that he had slapped or assaulted the accused at any time. Islam had been present throughout the interview and also during the scene reconstruction. He confirmed that the accused was never assaulted, forced or intimidated. Islam had received no complaint to that effect.
42. While the interview was in progress, the police officers had presented the accused to a judge at Lautoka High Court to seek an order for extension of his detention period. The accused has not made any complaint to the judge of any sort of ill treatment by police. There is evidence that the escorting officers had not been present in the examination room when the accused was examined by the doctors. He had not made any complaint to the doctors against police officers. Nor was there any complaint made to his own countryman, Islam.
43. There is no dispute that the accused had some blisters in his both palms before the interview started. When DC Sonal noticed those blisters, he had taken the accused to Ba Mission Hospital. Dr. Andrew who had examined the accused described those injuries as old and dry superficial burn marks in the process of healing, circular in nature. The accused in his grounds had not mentioned and in his cross-examination suggested that those injuries were inflicted by police officers.
44. According to what the accused had told Dr. Andrew, he had been brought to Fiji under the false pretense that he would be sent to Australia. The person who had brought him to Fiji had taken money from him and physically abused him by burning his palms using a heated pen. The history provided by the accused seemed consistent with the observations of the doctor as to the nature of burn marks. The accused had stated to the doctor that he felt safer with the police officers than he did with the person that he was living with. I am satisfied that those so called blisters were not caused by the police officers.
45. Doctor Andrew had observed no other injuries on accused's body. The accused in his cross-examination suggested that he had some injuries in his chest area but the doctor did not properly examine his body by taking off his garments. If the accused had injuries in the chest area, he was expected to complain of those injuries as he did in respect of the injuries in his palms. Doctor said that the accused did not complain of any such injuries for her to ask the accused to remove his vest.

46. Doctor Hing who had examined the accused on 21 April 2020, after the interview, had examined the suspect's whole body. He had not seen any bruises or injuries. The accused had not complained of anything done to him and was satisfied with police treatments. The accused contended that the two doctors contradicted each other on their evidence as to the presence of injuries on his palms. It is possible that doctor Hing's attention was not drawn to the palms due to lack of complaint by the accused. It is also possible that the wounds had healed by the time when he was produced for examination after two days of ointment treatment which had been prescribed by Dr. Andrews to expedite the healing process.
47. In any event, the so called inconsistency does not affect the case for prosecution as far as there is no evidence to link the police officers to those injuries. What matters is whether those injuries in some way affected the voluntariness of the accused in answering the questions. There is nothing to suggest that the accused, because of those burn marks, was not fit to be interviewed so as to render the interview process unfair or oppressive. Islam confirmed the medical evidence that the accused was well and strong during the entire interview.
48. The two video clips screened during the hearing further confirmed the position that the accused was fit and that he had voluntarily participated in the interview process. I saw him even laughing at one point and freely going to a tap twice to drink water. Anyone who has watched these two videos would hardly believe that the accused has been assaulted, intimidated or forced by police officers.
49. The accused queried whether a person who had committed such a crime would ever freely confess to police officers like that. The answers given by the accused in his interview provide a logical answer to this question. His caution statement could best be described as a mixed statement consisting of both admissions and denials/ defences. He appears to say, look, I didn't kill Nazrul, it was Rohan that did it, although I helped Rohan to bury the body. In respect of Rohan's death, he appears to have taken up the defence of self-defence. He may have thought that the answers he is giving in the interview would help him in his trial. On the other hand, the circumstances under which his arrest was made at the crime scene would have compelled him to peel off everything in the absence of any other choice.

50. In the video, the accused is seen complaining of being punched by an arresting officers (when they suspected that he was trying to escape). He had made the same complaint to Islam. However, he never questioned DC Timoci, the arresting officer, on the basis that he was punched during the arrest. Accused's failure to put such a proposition to the arresting officer, when he has amply displayed the ability to challenge police witnesses by way of cross-examination, compels me to believe that no such assault took place during the arrest.
51. Even if there had been such an assault during the arrest when the arresting officers suspected that the suspect was trying to escape, I am not convinced that, in the circumstances of this case, it would have affected the free will of the accused to give answers at the interview at which no arresting officer had been present.
52. The next important question is whether the police officers had failed to afford to the accused the constitutional rights of a suspect under arrest and whether conducting the interview in Hindi language has rendered the interview unfair.
53. The accused in his grounds and in the process of cross-examination, took up the position that him being a Bangladeshi national, it was unfair by him to conduct his interview in Hindi language. There is no dispute that the accused could not write or read Hindi. However, he spoke Hindi fluently and understood that language very well. All the witnesses called by the Prosecution confirmed this. In fact his own countryman Islam had come to the Ba Police Station as a Bengali interpreter. His service as an interpreter was not required because the accused had told police officers that he didn't need a Bengali interpreter as he could speak and understand Hindi well. The court observed how well the accused could communicate in Hindi when he across-examined the witnesses for Prosecution and when he conversed with DC Sonal (in the video) during the scene reconstruction.
54. The accused contended that his constitutional rights were violated because he could not write and read Hindi language. Section 13(1) of the Constitution which provides the rights of a suspect at the time of arrest states; *(a) Every person arrested or detained has the right to be informed promptly, in a language that he or she **understands**, of the (1) the reason for the arrest or detention and the nature of any charge that may be brought against that person;*

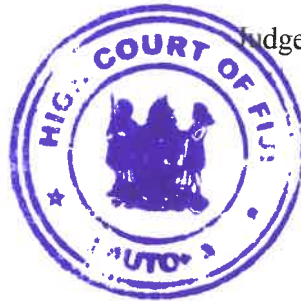
55. The arresting officer DC Timoci, an iTauaki policeman had explained the caution and the reason for arrest in English. Hindi speaking accused's landlord's wife had been there to explain what was being told in English by the arresting officers. The accused was arrested at the crime scene when the police officers found his two roommates missing and they noted blood stains in his room. The police team had come with the carrier driver. In those circumstances, even if the accused did not understand what the arresting officers were speaking in English, he should have known why he was being arrested. Even if he could not understand the caution put to him, no prejudice will be caused to him as the prosecution does not intend to adduce any admission or confession made at the time of his arrest.
56. Although the questions and answers of the interview had been recorded in Hindi which the accused says he could not read, each question and answer had been read in Hindi to the accused in the presence of witnessing officers. At the end of the interview the entire record of interview had been read in Hindi and the accused had accepted the contents and acknowledged by signing that he understood what was being read was correct. The witnessing officers confirmed that what was being read to the accused was the same conversation that took place between the accused and the interviewing officer during the interview.
57. S. 13(2) of the Constitution provides: Whenever this section requires information to be given to a person that information must be given simply and clearly in a language that the person **understands**. Since the accused could understand Hindi there is no basis for the allegation that his constitutional rights were violated by police by holding the caution interview in Hindi.
58. I am unable to agree that the constitutional rights of the accused were infringed by the police officers during the arrest or in the interview process. Even if there had been a violation, the accused was not prejudiced thereby. There is no prejudice caused to the accused by conducting the interview in Hindi language.
59. There is no evidence that the accused was assaulted, intimidated or forced to answer the questions at the interview and that he was oppressed or unfairly treated. The Prosecution proved beyond reasonable doubt that the answers were given by the accused and that those answers had been given voluntarily.

60. I hold the record of caution interview of the accused to be admissible in evidence at the trial proper.



Aruna Aluthge

Judge



20 April 2023

Solicitors:

Office of the Director of Public Prosecutions for State