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

## CRIMINAL CASE NO. HAC 162 OF 2021

## **STATE**

-vs.

- 1. JOSUA VULIVULI
- 2. TUPOU WAQABACA
- 3. SIMIONE ROKACIKACI

Counsels: Ms. Kantharia B and Mr. Naimila T - for State

Ms. Singh M - for Accused 1
Ms. Boseiwaqa T - for Accused 2
Ms. Chand N - for Accused 3

## **RULING**

- 1. The **State** seeks to adduce into evidence the Cautioned Interview statements of the Accused recorded at the Raiwaqa Police Station on 05/09/2021.
- 2. In considering the 3 caution interview statements recorded in this matter from the Accused when in police custody, it is unfortunate to note that there are shortcomings in the process followed to record all 3 statements, where there were deficiencies from the best practice requirements recommended by many local and other common law authorities.
- 3. The requirements needed to accept a confession made by an accused is now well settled in common law. In this regard, for a confession made by an accused to be admissible in evidence, firstly, the Prosecution should demonstrate that the confession was made voluntarily. That is the confession should not have been obtained through violence, fear or prejudice, threats and promises or by other improper inducements. This position was clearly pronounced in the **House of Lords** decision in the case *Ibrahim v R [1914]*<sup>1</sup>. Secondly, as held in the **House of Lords** decision of *R v Sang [1980]*<sup>2</sup>, the trial judge has the discretion to exclude the confession on a general ground of unfairness in recording the confession.
- 4. However, this Court is of the view that the infirmities noticed in the caution interview statements of the 2<sup>nd</sup> and the 3<sup>rd</sup> accused are not capable of invalidating those statements *per se* due to the noticed deviations from the best practice requirements. In addition,

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<sup>&</sup>lt;sup>1</sup> [1914] AC 599

<sup>&</sup>lt;sup>2</sup> [1980] AC 402

this Court did not notice any shortcomings in the recording of the caution interviews of the  $2^{nd}$  and the  $3^{rd}$  Accused that would necessitate this Court to invalidate these two caution interview statements on the ground of violation of the voluntariness requirement or absence of fairness in line with the **House of Lords** pronouncements in the cases of *Ibrahim v R*<sup>3</sup> and *R v Sang*<sup>4</sup>.

- 5. In relation to the 2<sup>nd</sup> Accused, Prosecution witness **PC 5469 Samuela** gave evidence of conducting the caution interview of this Accused **TUPOU WAQABACA.** He claimed that he conducted an interview with 2<sup>nd</sup> Accused in question-and-answer manner on 05/09/2021 and 06/09/2021, where himself and the 2<sup>nd</sup> Accused signed on every page. According to him, at the interview only himself and the 2<sup>nd</sup> Accused had been in the room, where he cautioned the Accused before and during the interview. In cross-examination, he affirmed that he did not assault the accused expecting answers and that the Accused did not make any complains about this interview. He also confirmed this Court that he noticed injuries on the Accused, and he had been medically examined before the interview. This witness further alluded that at the conclusion of the interview the 2<sup>nd</sup> Accused wanted to apologies for his involvement in this matter.
- 6. In relation to the 3<sup>rd</sup> Accused, Prosecution witness **PC 5514 Krishneel** gave evidence of conducting the caution interview of the this Accused **SIMIONE ROKACIKACI.** According to him, he had taken this Accused for medical examination before the caution interview. The interview had commenced around 12 pm on the same day, where himself and the 3<sup>rd</sup> Accused had signed the recorded interview. At the interview, there had been himself, the 3<sup>rd</sup> Accused, and his father in the room as requested by the Accused. He alluded that he cautioned the Accused before the interview and himself or any other officer didn't threaten or assault the accused. Further, this officer claimed that the Accused didn't make any complains before, during or after the interview. However, he had noticed injuries on the head of the Accused. At the conclusion of the interview, this witness had given the Accused to read the recorded interview.
- 7. Therefore, in considering the above detailed evidence led at the Voire dire inquiry and this Court not noticing any breaches of the required fundamental standards, this Court holds that it is safe to admit the caution interviews of the 2<sup>nd</sup> and the 3<sup>rd</sup> accused in evidence in this matter.
- 8. The caution interview of the 1<sup>st</sup> Accused **JOSUA VULIVULI** had been recorded by **PC 5479 Eliki.** In giving evidence at the Voire dire inquiry this witness informed this Court that he conducted the caution interview of the 1<sup>st</sup> Accused on 05/09/2021 at 10.40 am. According to him, before recording the caution interview, he had taken the 1<sup>st</sup> Accused to the hospital for medical examination and he had requested for the medical examination and seen the medical report after examination. However, as per his evidence, he informed this Court that he can't recall seeing any injuries on the Accused when conducting the caution interview. He further claimed that he started recording the caution interview at 10.40 am on 05/09/2021.

<sup>&</sup>lt;sup>3</sup> Supra, 1

<sup>&</sup>lt;sup>4</sup> Supra, 2

- 9. In cross examination, this witness admitted that he had made some mistakes in the caution interview statement and deleted those mistaken parts. He further admitted that he had not initialed the deleted potions and obtained the initials of the1<sup>st</sup> Accused. He further confirmed that after the medical examination it would have taken about 15 minutes to bring the 1<sup>ST</sup> Accused back to the police station and commence the caution interview.
- 10. In observing the medical report of the 1<sup>st</sup> Accused marked as **DEX** (1) (a) by the defence at this trial this Court identified that according to the medical examination conducted by the doctor in filling **DEX** (1) (a) he had noticed 2 lacerations on the scalp of the 1<sup>st</sup> Accused and another injury below the right eye of the 1<sup>st</sup> Accused. Further, as he informed, police officer **PC 5479 Eliki** had seen the medical report with details of these injuries before commencing the caution interview. When facts were such, this Court was surprised to hear from this officer in Court that he **can't recall seeing any injuries on the Accused** before conducting the caution interview when the injuries were on the scalp and the face. Further, though this witness mentioned that it would have taken about 15 minutes to bring the 1<sup>st</sup> Accused back to the police station after the medical examination for the caution interview, according to documents produced to Court, the medical examination had concluded at 10.40 am on 05/09/2021 and the caution interview had also commenced at 10.40 am the same day, which is an impossibility. It appears that no break had been given to the 1<sup>st</sup> Accused with the noted injuries after returning from the hospital.
- 11. In relation the cation interview of the 1<sup>st</sup> Accused, this Court noticed the vagrant disregard demonstrated by the officer who recorded the interview, where his disconcert was capable of raising reasonable questions whether the officer treated the accused fairly or vehemently disregarded his condition at the time of recording the interview, where he has not even noticed injuries the medical officer observed on his face and the sculp as per **DEX1** (1) (a). In considering the importance of fairness in treating the accused in recording such a caution interview statement, apart from the requirement of voluntariness, this Court take guidance from the **House of Lords** pronouncement in the cases of *R v Sang and R Mangan* [1980] AC 402. Therefore, as per revealed circumstances, this Court does not find it safe to include the caution interview of the 1<sup>st</sup> accused as a part of the evidence. Thus, in using the discretion of this Court in relation to fairness, this Court exclude the caution interview statement of the 1<sup>st</sup> Accused from evidence at the trial.

Hon. Justice Dr. Thushara Kumarage

At Suva This 18<sup>th</sup> day of September 2023

cc: - Director of Public Prosecutions

- Legal Aid Commission