

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 107 of 2022

STATE

V

BRADLEY ROBERT DAWSON

**Counsel** : Ms. Sheenal Swastika for the State  
Mr. Anil Prasad for the Accused

**Dates of Hearing** : 14-16 and 19-20 February 2024

**Closing Submissions** : 22 February 2024

**Date of Ruling** : 28 February 2024

**VOIR DIRE RULING**

[1] The above named Accused, Bradley Robert Dawson, was charged by the Director of Public Prosecutions (DPP) with the following offence:

***Statement of Offence***

**MURDER**: Contrary to Section 237 of the Crimes Act 2009.

***Particulars of Offence***

BRADLEY ROBERT DAWSON, on the 9<sup>th</sup> day of July 2022, at Turtle Island Resort, in the Western Division, murdered **CHRISTE JIAO CHEN**.

- [2] Investigations into this case had been conducted by officers of the Lautoka Police Station. Pursuant to his arrest, on 10 July 2022, the Accused had been brought to the Turtle Island Resort.
- [3] On the 11 July 2022, the Accused was caution interviewed by Detective Sergeant (D/Sgt) 4943 Martin Koli, at the Turtle Island Resort. Detective Inspector Silio Finau [Now Assistant Superintendent of Police (ASP)], was the Witnessing Officer during the recording of the caution interview statement. The recording of the caution interview was continued on 12 July 2022, by Detective Sergeant (D/Sgt) 4943 Martin Koli, at the Lautoka Police Station. Detective Inspector Silio Finau continued to be the Witnessing Officer during the recording of the caution interview statement on the second day.
- [4] The Accused is challenging the admissibility of the said caution interview statement.
- [5] In the Grounds of Voir Dire, which were filed in Court on 26 September 2022, the Accused objects to the admissibility of his caution interview [and charge statement], on the following grounds:
- a) The Accused was not informed promptly, in a language that he or she understands, of –
    - (i) The reason for the arrest or detention and the nature of any charge that may be brought against that person;
    - (ii) The right to remain silent; and
    - (iii) The consequences of not remaining silent.
  - b) To remain silent;
  - c) To communicate with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;
  - d) Not to be compelled to make any confession or admission that could be used in evidence against that person;
  - e) To communicate with, and be visited by,-
    - (i) His or her spouse, partner or next of kin; and
    - (ii) A social worker or religious counsellor.

- f) The Accused was denied his rights to consult a Solicitor when arrested and after arrest;
- g) That the statements were obtained in circumstances that were unfair to the Accused; ("overborne" by questioning).
- h) That the statements were obtained in circumstances that were oppressive; (accused being cross-examined).
- i) That the statements were obtained in breach of Rule 2 and 4 of the Judges' Rules; and;
- j) That the statements were obtained in breach of Section 13 (1) of the Constitution of Fiji.

The Accused has also requested the State to furnish him with the following documents:

The statements of all Investigation Officers that were involved in arresting and/or taking the Accused in custody, before the interview and during the interviews and also copies of all Police Diaries and Attendance Diaries.

### **The Law**

- [6] In *Ganga Ram and Shiu Charan v. Reginam*; Criminal Appeal No. 46 of 1983 (13 July 1984) (unreported) the Fiji Court of Appeal outlined the two grounds to be considered for admissibility of confessions;

*"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 or 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* [1914] AC 599; *DPP v. Ping Lin* (1976) AC 574. Secondly even if such voluntariness is established there is also a 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 will, by trickery or by unfair treatment. *Regina v. Sang* (1980) AC 402. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account."*

- [7] His Lordship, Justice Daniel Goundar in the case of the *State vs. Maikeli Rawaqa and Segran Murti* Criminal Case No. HAC 42 of 2004 (16 February 2008); held as follows:

“The principal governing the admissibility of confessions are well settled. Confessions could not properly be given in evidence unless it was shown that they were made voluntarily, that is, not obtained through violence, fear of prejudice, oppression, threats and promises or other improper inducements (*Ibrahim v R* [1914] AC 599). Even if such voluntariness is established, the trial Judge has the discretion to exclude the confessions on a general ground of unfairness (*R v Sang* [1980] AC 402). In addition, confessions could be excluded for breaches of Constitutional rights.”

- [8] Accordingly, in order for a confession made by an Accused person to a police officer to be admissible as evidence against the maker of that confession, the confession should have been made by that Accused voluntarily, meaning it should have been made by the Accused on his own free will, with full appreciation of the legal consequences. If the said confession is made as a result of oppression, such confession would not be admissible and should be excluded. Oppression is anything that undermines or weakens the exercise of free will. However, even if such voluntariness is established, the Trial Judge has the discretion of ruling such confession inadmissible, if it is obtained in an unfair manner (on general grounds of unfairness).
- [9] The onus of proving voluntariness/lack of oppression and fairness is on the prosecution and they must prove these matters beyond reasonable doubt. If there has been a breach of any of the Accused’s Constitutional rights, the prosecution must prove that the Accused was not thereby prejudiced.
- [10] As can be observed from the Grounds of Voir Dire filed in this case, the Accused is challenging the voluntariness and fairness of the caution interview statement made by him.
- [11] During the Voir Dire hearing the prosecution led the evidence of the following 5 witnesses in order to prove beyond a reasonable doubt that the caution interview statement was made voluntarily by the Accused and that it was not obtained in an unfair manner:

1. Assistant Superintendent of Police (ASP) Ilario Belo

2. Detective Sergeant (D/Sgt) 4943 Martin Koli
3. Assistant Superintendent of Police (ASP) Silio Finau
4. Detective Constable (DC) 5827 Atama Rogocake
5. Alvin Raj

[12] The caution interview statement of the Accused, recorded on 11 and 12 July 2022, was tendered by the prosecution during the hearing as Prosecution Voir Dire Exhibit PE 1.

[13] The defence called one witness, the Accused himself.

### The Prosecution Case

[14] ASP Ilario Belo testified that he has served in the Fiji Police Force for the past 27 years. During this period he has served in the Uniform Branch and in the Criminal Investigation Department (CID). He is currently serving at the Lautoka Police Station. He had been confirmed as an ASP in the year 2022.

[15] The witness said that in the year 2022, he was based at the CID Unit at Lautoka Police Station. He had been Acting ASP at the time. As Acting ASP, the witness was heading the CID Unit for Lautoka.

[16] The witness testified to the events which transpired on 9 July 2022. He said that around 2.00 p.m. on 9 July 2022, the Police had received a report from Turtle Island Resort that a tourist woman was lying inside a room and that her husband was found missing.

[17] On receipt of this report, he had tried to arrange for an advance party to go to Turtle Island and preserve the scene of crime. However, since the seas were very rough, they had decided to go to Turtle Island the next day.

[18] Accordingly, around 5.00 in the morning on 10 of July 2022, the witness along with the Police team had reported for duty at the Lautoka Wharf. The team had been headed by Divisional Crime Officer, SSP Iakobo Waiseva and comprised the witness, Inspector Silio, Sgt. Netava, Sgt. Koli, DC Peni, WDC Amelia and the scene of crime officers – Sgt. Joe, Corporal Pita, WDC Ili, WDC Ivamere and DC Atama.

- [19] The witness had proceeded to Turtle Island in a small fibre boat along with Inspector Silio, Sgt. Joe, Corporal Pita, WDC Ili, WDC Amelia and DC Peni. The rest of the team had remained at the wharf for a much bigger Police boat to arrive.
- [20] The witness testified that it had taken over 2 hours to reach Turtle Island, since it was windy and the sea was rough while they were travelling. They had reached Turtle Island around 7.00 in the morning and had been met on arrival by the Manager of the Hotel/Resort.
- [21] The Manager of the Resort had taken the witness straight to House No. 15 which was the alleged scene of the crime (where the deceased's body had been found). The witness said that on reaching the said place, the scene of crime officers had taken over the scene and cordoned off the area.
- [22] Upon further inquiries, it was found that one of the kayaks belonging to the Hotel was missing. The witness testified that the kayaks were kept about 20 to 25 metres away from House No. 15.
- [23] The witness said that he together with DC Atama and PC Semisi (a Police boat Captain) had begun searching the Coast of Turtle Island for the missing kayak in a fibreglass boat belonging to the Resort. When they were about a mile searching the coast, they had received a call from the Resort informing them that an European man was at Matacawalevu Village in the Yasawas. This village is in Matacawalevu Island – opposite the Turtle Island Resort.
- [24] At the time the call was received, the witness and the other two officers were close to Matacawalevu Village. They had then proceeded to the village. At the village, they were taken to the dock where the Accused was sitting with a group of iTaukei families.
- [25] The witness testified that he had then introduced himself and his team to the Accused and the Accused had introduced himself as Brad. The witness had told the Accused the reason for their presence – that they were looking for a kayak and a tourist who were missing from the Turtle Island Resort. The Accused had confirmed that he was the person that brought the kayak and was the same tourist that was missing from the Turtle Island Resort.

- [26] ASP Belo said that at the time the Accused had looked tired and his face was red and he also had bruises on his leg.
- [27] The witness had then gone on to search the Accused. He testified that the reason for doing so was to make sure that the Accused was not armed. Upon searching the Accused, he found a wallet containing assorted cards belonging to the Accused and the deceased, the Accused's passport and some cash (US\$1,093.00). The witness had kept the said items in his custody.
- [28] They had then looked for the missing kayak but could not locate it. Thereafter, the witness had travelled back to Turtle Island Resort with the Accused and DC Atama and PC Semisi in the same fibreglass boat.
- [29] The witness testified that at this stage the Accused started admitting that he had an argument with his wife, the deceased, and he had punched her a few times before it ended up in the washroom where he had pushed the victim and her hand hit the cistern of the toilet while her head hit the wall.
- [30] The witness said that at this stage he had cautioned the Accused stating that he is not obliged to say anything unless he wishes to do so, but whatever he says will be taken down in writing and given in evidence. The witness testified that he had further explained to the Accused in simple terms that whatever he says can be used against him in Court. He had then arrested the Accused informing him that he was arresting him for the death of his wife.
- [31] The witness said that the Accused had continued making verbal admissions. The Accused had stated that it was just another argument (between him and his wife) but it was a different one because it got physical. The Accused had further gone on to state as follows: *"That night as a routine they sleep with underwear and they were lying on the bed – he was holding the deceased from the back when the deceased told him that she should not be there as the Accused is hurting her. She said some more words which made him snap and he punched the deceased a few times and ended up in the washroom where they again argued. He pushed the deceased and she hit the cistern and her head hit the wall. She fell down between the wall and the toilet pan. He then went away from there using a kayak"*.

- [32] ASP Belo confirmed that the Accused was not under arrest at Matacawalevu Village and was only arrested on board the boat. When asked for the reason the Accused was being taken back to Turtle Island with him, the witness said: *"I told him that I will take care of him as he was tired and living at Turtle Island Resort. That is why I took him to Turtle Island. So at that time I was considering him as a witness knowing that he will have vital information about the deceased."*
- [33] The witness testified that on the way back to Turtle Island, the Accused was emotional and he was saying that he was thinking about his wife. They had reached Turtle Island Resort around 7.00 p.m.
- [34] On arrival at Turtle Island, the Accused was escorted to a hostel where he was kept. These hostels were used by the staff of the Resort for their accommodation. The Accused had been handed over to Sgt. Koli. The Accused had his bath, changed and also had his dinner and went to the room that was prepared for him to rest.
- [35] The witness testified that DC Atama was detailed to be the Escorting Officer for the Accused, while Sgt. Koli was to be the Interviewing Officer and Inspector Silio was assigned to witness the interview.
- [36] ASP Belo identified the Accused in the dock as Bradley Robert Dawson, the person he had formally arrested.
- [37] The next witness for the prosecution was Detective Sergeant (D/Sgt) 4943 Martin Koli. He testified that he is currently serving at the CID Branch of the Lautoka Police Station. He had joined the Fiji Police Force in the year 2013. He had been promoted as D/Sgt in September 2021.
- [38] The witness testified as to how he had proceeded to the Turtle Island Resort in the early hours of the morning of 10 July 2022, along with other officers of the Lautoka Police Station. His role in this case was to record the caution interview statement of the Accused.
- [39] The recording of the caution interview statement of the Accused had commenced on 11 July 2022 at the staff quarters at Turtle Island Resort. Prior to recording of the statement, the Accused had been taken for medical treatment at the Nacula Health Centre.



- [40] Thereafter, the witness testified to the manner in which he recorded the caution interview statement of the Accused over a period of two days. The recording of the statement had commenced at 12.44 hours, on 11 July 2022, at the Turtle Island Resort. The statement had been recorded in the English language and was handwritten in the form of question and answer. Detective Inspector Silio Finau (now ASP) was present during the interview as the Witnessing Officer. The caution interview statement of the Accused was tendered to Court as Prosecution Voir Dire Exhibit PE1.
- [41] The recording of the caution interview statement had continued on 12 July 2022, at the Lautoka Police Station, commencing at 9.15 a.m. Detective Inspector Silio Finau was present as the Witnessing Officer during the recording of the interview on the second day as well.
- [42] The statement had been signed by the Accused, the witness and the Witnessing Officer Silio Finau on the first day. However, on the second day, the Accused had exercised his right to remain silent and had thus refused to sign the statement.
- [43] Sergeant Koli testified that he had granted the Accused all his rights under the Constitution while recording his caution interview statement. At the very inception, the Accused had been administered with the first hour procedures and permitted to contact a lawyer from the Legal Aid Commission.
- [44] Thereafter, the allegation had been clearly put to him that he was being questioned regarding the death of his wife, Christie Chen. He had been duly cautioned to the effect that he is not obliged to say anything unless he wishes to do so, but whatever he says will be put into writing and given in evidence in Court.
- [45] The Accused had been given the right to consult a lawyer of his choice at his own expense or to be provided the services of a legal practitioner from the Legal Aid Commission. The witness testified that the Accused did not wish to exercise this right since he had already talked to a Legal Aid lawyer through the phone.
- [46] The witness testified that the caution interview statement had been recorded fairly and the Accused had not been compelled in any manner whatsoever to make any admissions that could be used in evidence against him.

- [47] The Accused had also been given the right to communicate with his next of kin, a religious counsellor or a social worker. The Accused had informed that he will contact his mother later. Within 15 minutes of the commencement of the interview, the interview had been suspended for the Accused to speak with a staff member from the USA Embassy. It is recorded that one Mrs. Swain of the USA Embassy had spoken to the Accused by phone.
- [48] Furthermore, the witness testified to the several instances where the interview had been suspended on the first day – for the Accused to have his lunch and to have a smoke respectively. The recording of the caution interview had been suspended on the first day at 15.48 hours. Thereafter, the Accused had been transported by seaplane to the mainland and the interview had continued on the next day at the Lautoka Police Station.
- [49] Sergeant Koli testified that on the second day too (on 12 July 2022) the Accused had been duly granted all his rights under the Constitution while recording his caution interview statement.
- [50] When the Accused was given the right to consult a lawyer of his choice at his own expense or to be provided the services of a legal practitioner from the Legal Aid Commission, the Accused had requested to consult a lawyer of his choice. Accordingly, he had contacted Mr. Iqbal Khan over the phone. The recording of the interview had been suspended for over one hour for the Accused to consult with his lawyer.
- [51] The witness said that the recording of the interview had been further suspended at the request of the Accused for him to be taken to a doctor for treatment of the cuts he had on his body. Accordingly, the Accused had been taken to the Lautoka Hospital for examination and treatment.
- [52] Furthermore, the witness testified to the several instances where the interview had been suspended on the second day – for the Accused to speak with his counsel, to visit the washroom and to have a smoke respectively.
- [53] Sergeant Koli testified that at the conclusion of the recording of the caution interview statement, the Accused had been given his statement to read but he had refused to do so and also did not want the statement read back to him.

- [54] The witness further testified that the Accused had made no complaints to him at any time during the recording of his caution interview statement.
- [55] The witness identified the Accused in the dock as Bradley Robert Dawson.
- [56] The next witness for the prosecution was ASP Silio Finau. He is currently the Officer in Charge of the Sigatoka Police Station. He has been in the Fiji Police Force for the past 19 years. Prior to being posted to Sigatoka, he had been serving in the Uniform Branch and Intelligence Branches of the Lautoka Police Station. He had been promoted as ASP in February 2023.
- [57] The witness said that in July 2022, he was an Inspector. He was the Officer in Charge of the Crime Intelligence Unit in the Western Division based at Lautoka.
- [58] The witness testified that he had been assigned to be the Witnessing Officer during the recording of the caution interview statement of the Accused. The Caution Interviewing Officer was Sergeant Martin Koli. The witness corroborated the evidence of Sergeant Koli in all material particulars.
- [59] The next witness for the prosecution was DC 5827 Atama Rogocake. He is currently serving at the Lautoka Police Station. This is his 7<sup>th</sup> year of services in the Fiji Police Force.
- [60] The witness testified to the events which took place on 10 July 2022. At the time he was stationed at the Lautoka Police Station, attached to the Criminal Investigations Department (CID).
- [61] The witness testified to the manner in which he had proceeded to the Turtle Island Resort on the said day to conduct investigations into this matter, together with other officers of the Lautoka Police Station. He had accompanied ASP Belo and PC Semisi (a Police boat Captain) in searching the Coast of Turtle Island for the missing kayak in a fibreglass boat belonging to the Resort. He further testified to the manner in which the Accused had been located at Matacawalevu Village in the Yasawas and brought back to the Turtle Island Resort.
- [62] On returning to Turtle Island, ASP Belo had instructed the witness to be the Escorting Officer for the Accused. The Accused had been provided a room at the staff quarters of the Resort. The Accused had been escorted to the said room for him to change.

Thereafter, he was provided with his dinner and given time to rest. The witness said that he had been sitting outside the room until morning while the Accused rested inside.

[63] The next morning, 11 July 2022, the Accused had been taken to the Nacula Health Centre for a medical check-up. This was for the Accused to obtain treatment for the scratches on his hands and legs.

[64] After the medical examination, they had returned to Turtle Island where the Accused had been provided with his breakfast. Thereafter, he had been handed over to Sergeant Koli and IP Silio for the recording of his caution interview statement.

[65] After the suspension of the recording of the caution interview statement for the day, the Accused had been escorted to the mainland by seaplane, along with Sergeant Koli. The Accused had been kept overnight at the Market Police Post since there was no cell block available at the Lautoka Police Station at the time.

[66] The witness testified that the next morning, 12 July 2022, he had proceeded to the Market Police Post to check on the Accused. He had found that the Accused had already had his breakfast. He had then escorted the Accused to the Lautoka Police Station for the continuation of his caution interview statement.

[67] After the recording of his caution interview statement was concluded, the Accused had been provided with dinner at the Lautoka Police Station, and then escorted to the Market Police Post to stay the night.

[68] The witness testified that on 13 July 2022, the Accused had been escorted back to the Lautoka Police Station for completion of the investigations and for him to be formally charged. After he was charged the Accused had been given time to consult with a Justice of the Peace (JP). The witness testified that this consultation had taken place privately, in the same room where the caution interview statement had been recorded. At the time, the witness had remained outside the said room.

[69] Thereafter, the witness had been instructed to take the Accused to the Cell Block area after which he was produced in the Lautoka Magistrate's Court.

[70] The witness identified the Accused in the dock as Bradley Robert Dawson.

- [71] The final witness for the prosecution was Mr. Alvin Raj, a Justice of the Peace (JP). He testified that he is a Businessman by occupation and a Justice of the Peace for the Fiji Island. He had been appointed as a JP in 2016.
- [72] As a JP his responsibilities includes certifying of documents from originals to photocopies, signing Search Warrants for Police Officers, signing Affidavits, including for Police Officers and certifying Statutory Declarations. In addition, on several occasions, he has been called to the Police Station to witness some of the Accused persons and to certify whether they have been treated fairly.
- [73] The witness testified that on 13 July 2022, he had been called by Inspector Koli (Sergeant Koli) and Crime Officer Inspector Belo, of the Lautoka Police Station. They had called him to come to the Police Station and to have a conversation with Mr. Bradley Robert Dawson, the Accused.
- [74] Accordingly, the witness had proceeded to the Lautoka Police Station. Inspector Koli had told him to have a conversation with the Accused. He was given a room where he and the Accused had sat and had a conversation for a few minutes. The witness said it was the video recording interview room at the Police Station. At the time there was no one inside the room other than for the Accused and the witness. Inspectors Koli and Belo had been outside the room.
- [75] The witness testified that he had explained to the Accused that he is not a Police Officer. He had stated that he was just there to ask the Accused whether any threat or force was used on him. The Accused had confirmed that no such threat or force had been used on him. The witness had also asked the Accused whether he is okay and whether he is fit. The Accused had confirmed that he was. The witness said that the Accused had not made any complaints to him at the time.
- [76] The witness identified the Accused in the dock as Bradley Robert Dawson.
- [77] All the above prosecution witnesses were cross-examined by the Defence Counsel and the defence version of the events were suggested to them. All the said prosecution witnesses stood by their evidence that the Accused had been treated fairly at all times whilst in their custody.

[78] That was the case for the prosecution.

### The Defence Case

[79] The Accused is 40 years of age. He testified that on 10 July 2022, when he was at Matacawalevu Island, three Police Officers had approached him. They were ASP Belo, DC Atama and DC Semisi. Officer Belo had introduced himself and the other Police Officers and had asked the witness a couple of questions. He asked the witness as to who he was. The witness had said that he was Bradley Dawson from the United States.

[80] ASP Belo had then wanted to search the witness for the purpose of getting his identification. He had asked the witness for his documents and given him a full body pat-down search. The witness said it was a typical Police pat-down search. ASP Belo had taken several items from the witness – a black wallet containing his passport, driving licence, assorted credit cards, a medical card/health insurance card, a duplicate driving licence of his wife, plus one of her credit cards and US dollars cash.

[81] The witness said that ASP Belo did not provide him with a Search List then and there. He had given him a Search List about 2 hours later when they were back at Turtle Island.

[82] After conducting the search, ASP Belo had told him that he is placing him under arrest and that he will be taking him to Turtle Island for questioning. The witness said that ASP Belo had arrested him at Matacawalevu Village. He had not been given the reasons for his arrest. ASP Belo had said that he is taking the witness for questioning to Turtle Island.

[83] The witness said he had not been explained the nature of the charge that may be brought against him, nor was he given the right to remain silent or explained the consequences of not remaining silent. The witness further testified that ASP Belo had not given him the right to communicate with the legal practitioner of his choice nor to engage a legal practitioner from the Legal Aid Commission.

[84] The witness testified that ASP Belo had not informed him that he is not compelled to make any confession or admission that could be used in evidence against him. He had not been informed that he has the right to communicate with his next of kin or a social worker or religious counsellor.

- [85] When asked to explain as to how ASP Belo had affected his arrest, the witness said that ASP Belo had told the witness that he is placing him under arrest and taking him to Turtle Island for questioning. ASP Belo had then placed his left hand on the back of his right arm and led him to the boat. The boat was close to the dock at Matacawalevu Village. The witness said he had complied with ASP Belo's instructions.
- [86] Whilst heading to the boat the witness said that there was no conversation between himself and ASP Belo. Whilst boarding the boat, ASP Belo had asked the witness to show the appropriate location where he was stranded in the island. The witness said that he had pointed out the location on the beach.
- [87] Thereafter, they headed back to Turtle Island. The witness testified that the Police Officers were taking him to the side of the island instead of the main docks. He had asked ASP Belo as to why they were not going to the main dock as he was wanting to see his wife Christe. ASP Belo had told him that he cannot see his wife since she was in hospital and that they were first taking him for questioning and thereafter, he will be taken to see his wife.
- [88] The witness testified that there was no conversation between him and ASP Belo while they were on the boat. The witness also denied that he had been arrested on the boat and reiterated that he had been arrested at Matacawalevu Village.
- [89] The witness further testified to his best estimate Matacawalevu Village was approximately 2 kms from Turtle Island and the area on the beach where he was stranded was approximately 1 km from Turtle Island.
- [90] The witness testified that upon arrival at Turtle Island, ASP Belo and the other officers took him to a private area away from the main part of the island where there was a picnic table and a roof structure over the table and there was also a swimming pool out there. ASP Belo had asked him to sit down at the picnic table and had told that he had some bad news for him. He had told the witness that his wife had an accident and that she had died at the hospital from life threatening injuries that could not be sustained.
- [91] Thereafter, ASP Belo had proceeded to ask the witness questions regarding the 8 July 2022 – regarding the events which took place that day and that night. He had been asking the witness as to what he and his wife were doing that day and that night. At one

point while questioning the witness, ASP Belo had become aggressive and raised his voice and he was also banging on the picnic table. The witness said that he had told ASP Belo that he did not hit his wife. However, ASP Belo would not accept his answers.

- [92] The witness said that he had felt threatened at the time. When ASP Belo had observed the witness's reaction, he had stopped writing and had come over to him and placed his hand on his back and told him to relax.
- [93] The witness testified that he was then taken to some staff quarters at the Turtle Island Resort to take a shower and to have his food. He said there was a big room where the Police Officers stayed in and then there was an open area and a small hall way with a couple of rooms in it. The witness said that he was kept in one of the smaller rooms.
- [94] The witness testified that he was not alone in the room. Two Police Officers – DC Atama and DC Joape remained in the room all night. They had brought a bowl of kava which the witness had consumed before going to bed. When asked as to whether he managed to get a good rest, the witness said: *"I slept as best as I could, all things considered"*.
- [95] The witness next testified to the events which transpired on 11 July 2022. He said he had spoken to a lawyer from the Legal Aid Commission and testified to Court as to what he had spoken with the said lawyer. The witness also said that during the interview he had received a call from one Christine Swain from the US Embassy and had spoken to her.
- [96] The witness testified that during the recording of the caution interview statement, Sergeant Koli had never told the offence or the allegation to him. The witness was shown his caution interview statement - Prosecution Voir Dire Exhibit PE 1. The witness admitted to signing on pages 1 to 12 of the caution interview statement, except at the end of page 11 which signature he denied as being his. The witness said that all signatures had been placed on the statement at the end of the recording of the first day.
- [97] The witness said that he was not given a chance to read back his statement on 11 July 2022. He confirmed that he had been emotional and was in tears and talking about his wife during the recording of his statement as testified to by Sergeant Koli.
- [98] When asked as to whether this was the true caution interview statement of his, the witness said: *"It looks like the caution interview that was conducted as far as I can tell"*.



- [99] When asked whether he was fairly treated by Sergeant Koli regarding his Constitutional Rights, the witness said: *"I was not given a right to talk to a private lawyer – outside of that they covered my Constitutional Rights"*.
- [100] The witness next testified to the events which transpired on 12 July 2022, the second day of the caution interview statement. He had asked Sergeant Koli to speak to a good lawyer. Sergeant Koli had given him the name of Mr. Iqbal Khan and he had been permitted to talk to Mr. Iqbal Khan. He had spoken to him on Sergeant Koli's phone.
- [101] When asked as to how Sergeant Koli had treated him on 12 July 2022, the witness said: *"To the best of my recollection they treated me well. After I spoke to Mr Khan, they did everything correctly as far as I understand procedure"*.
- [102] With regard to Question 156 in the caution interview statement, the witness denied that he had given the answer, 'Yes please'. The witness said that he did not give that answer as he had exercised his right to remain silent.
- [103] The witness further testified that he had been taken to the Lautoka Hospital on 12 July 2022, for examination and treatment.
- [104] As to the Witnessing Officer, ASP Silio Finau, the witness confirmed that the said Officer was present during the recording of his caution interview statement. However, for a good portion of the caution interview statement he had been sleeping and snoring.
- [105] With regard to the testimony of Alvin Raj, the witness confirmed that the said Alvin Raj had visited him at the Lautoka Police Station on 13 July 2022 and had spoken to him. However, the witness said that he had informed Alvin Raj that he was exercising his right to remain silent and had remained silent during the meeting with him.

### **Analysis**

- [106] The state is relying on the admissibility of the caution interview statement of the Accused, recorded on 11 and 12 July 2022, by Detective Sergeant 4943 Martin Koli-Prosecution Voir Dire Exhibit PE 1. The Accused is challenging the admissibility of the said caution interview statement and has filed several grounds of challenge.

[107] On a close perusal of the Grounds of Voir Dire filed by the Accused, it is clear that the grounds of challenge are primarily in relation to alleged breaches of Section 13 (1) of the Constitution of the Republic of Fiji 2013 (“Constitution”). Grounds (a), (b), (c) and (d) are corresponding to Section 13 (1) (a), (b), (c) and (d) of the Constitution respectively. Similarly, Ground (e) is a reference to Section 13 (1) (k) of the Constitution.

[108] ASP Ilario Belo has clearly testified in this Court as to the manner in which he caused the arrest of the Accused. He stated that the Accused had been arrested on board the fibreglass boat, on the way from Matacawalevu Village to Turtle Island Resort. ASP Belo confirmed that the Accused was not under arrest at Matacawalevu Village and was only arrested on board the boat. This had happened when the Accused had begun making admissions on board the boat.

[109] ASP Belo testified that at this stage he had cautioned the Accused stating that he is not obliged to say anything unless he wishes to do so, but whatever he says will be taken down in writing and given in evidence. The witness testified that he had further explained to the Accused in simple terms that whatever he says can be used against him in Court. He had then arrested the Accused informing him that he was arresting him for the death of his wife.

[110] The position of the Accused was that he was arrested at Matacawalevu Village. The Learned Defence Counsel brought to the attention of Court that in the Admitted Facts filed in Court on 21 August 2023, there is reference at paragraph 8 to the following: *“IT IS ADMITTED THAT the Accused was found to be in possession of the following items at the time he was arrested at Matacawalevu, on 10 July 2022.....”*

[111] It is my opinion that the said paragraph of the Admitted Facts does not contradict the evidence of ASP Belo who testified that the arrest of the Accused took place on board the boat. The area where the arrest took place maybe referred to as Matacawalevu. However, it maybe be distinguished from Matacawalevu Village, where the Accused had been located.

[112] Sergeant Koli has testified in this Court as to the manner in which he recorded the caution interview statement of the Accused, on 11 and 12 July 2022. Sergeant Koli testified that he had granted the Accused all his rights under the Constitution while

recording his caution interview statement. At the very inception, the Accused had been administered with the first hour procedures and permitted to contact a lawyer from the Legal Aid Commission. The Accused confirmed this position during the course of his testimony.

[113] Thereafter, the allegation or the nature of the charge had been clearly put to the Accused, that he was being questioned regarding the death of his wife, Christe Chen. This is reflected after Question and Answer 3 of the record of interview. It is confirmed at Question and Answer 4 that the Accused had understood the nature of the charge. At Question and Answer 5 the Accused has signed to acknowledge same.

[114] The Accused had been duly cautioned to the effect that he is not obliged to say anything unless he wishes to do so, but whatever he says will be put into writing and given in evidence in Court. This is reflected after Question and Answer 3 of the record of interview. It is confirmed at Question and Answer 6 that the Accused had understood the cautionary words put to him. At Question and Answer 7 the Accused has signed to acknowledge same.

[115] From the above, it is evident that the Accused had been given the right to remain silent and also explained the consequences of not remaining silent. These rights had been again informed to the Accused in simple words as found at Question and Answer 17 and 18 respectively.

[116] It is also reflected in the caution interview statement that these cautionary words had again been put the Accused at the recommencement of the interview, after the interview had been suspended for a particular reason.

[117] The Accused had been given the right to consult a lawyer of his choice at his own expense or to be provided the services of a legal practitioner from the Legal Aid Commission on the first day of the interview. Sergeant Koli testified that the Accused did not wish to exercise this right since he had already talked to a Legal Aid lawyer through the phone. On the second day, when this right was put to him, the Accused had requested to consult a lawyer of his choice. Accordingly, he had contacted Mr. Iqbal Khan over the phone. The recording of the interview had been suspended for over one hour for the Accused to consult with his lawyer.

[118] Sergeant Koli testified that the caution interview statement had been recorded fairly and the Accused had not been compelled in any manner whatsoever to make any admissions that could be used in evidence against him.

[119] On the 11 July 2022, the first day of the interview, the Accused had also been given the right to communicate with his next of kin, a religious counsellor or a social worker. The Accused had informed that he will contact his mother later. This is reflected at Question and Answers 15 and 16 of the caution interview statement.

[120] Furthermore, within 15 minutes of the commencement of the interview, the interview had been suspended for the Accused to speak with a staff member from the USA Embassy. It is recorded that one Mrs. Swain of the USA Embassy had spoken to the Accused by phone.

[121] The Accused has alleged in his grounds of Voir Dire that his caution interview statement was obtained in circumstances that were unfair and oppressive. Both Sergeant Koli, the Interviewing Officer and ASP Silio Finau, the Witnessing Officer, have denied these allegations.

[122] In fact, the Accused when asked whether he was fairly treated regarding his Constitutional Rights on the first day, testified: *"I was not given a right to talk to a private lawyer – outside of that they covered my Constitutional Rights"*. With regard to the second day, the Accused further testified as follows: *"To the best of my recollection they treated me well. After I spoke to Mr Khan, they did everything correctly as far as I understand procedure"*.

[123] During this inquiry the Defence strongly contended that the State is in breach of Rules II and IV of the Judges' Rules. The State's position is that they have clearly complied with the provisions of Rule II. In respect of Rule IV the position of the State is that the said Rule applies to charge statements after the Accused is formally charged. In any event the position of the State is that the Accused was given the opportunity to add, alter or correct anything in his caution interview statement (Question 158). However, the Accused had refused to do so.

[124] It must also be borne in mind that the Judges' Rules are not rules of law but rules of practice drawn up for the guidance of Police Officers.

[125] As I have stated before the onus of proving the voluntariness and fairness of a caution interview statement is on the prosecution and they must prove these matters beyond reasonable doubt.


[126] Taking into consideration the totality of the evidence led at the hearing, I am of the opinion that the prosecution has established beyond reasonable doubt that the recording of the Accused's caution interview statement was conducted fairly and voluntarily, meaning that the statement was made by the Accused on his own free will, with full appreciation of the legal consequences.

### **Conclusion**

[127] In the circumstances, I hold that the caution interview statement of the Accused (Prosecution Voir Dire Exhibit PE1) is admissible in evidence.



Dated this 28<sup>th</sup> Day of February 2024

  
**Riyaz Hamza**  
**JUDGE**  
**HIGH COURT OF FIJI**

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Lautoka.**  
**Solicitors for the Accused** : **Anil Prasad Lawyers, Barristers & Solicitors, Lautoka.**

