

THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 304 of 2023

BETWEEN : **STATE**

AND : **VACOLO QIO**

Counsel : **Mr U Lal for the State**
Mr T Varinava & Ms Kete for the Accused

Hearing : **19, 20, 25 November and 12, 13 December 2024**

Submission : **20 December 2024**

Judgment : **11 March 2025**

VOIR DIRE RULING

- [1] Vacolo Qio is charged with one count of murder, one count of burglary and one count of theft. The charge pertains to events on 14 September 2023. Mr Qio is alleged to have murdered Ms Chand Kaur whilst he was stealing personal property from her house.
- [2] The accused was interviewed by police on 15 and 16 September 2023 and charged on 16 September 2023. He made admissions during the interview, scene reconstruction and charging statement. He challenges the admissibility of the admissions.
- [3] The basis for the challenge is that they were procured by threats and violence by police officers. In addition, it is alleged that the accused was subjected to oppressive and unfair intimidation in that he was handcuffed the night of his arrest and made to sleep on the concrete floor without a blanket, given no meals, was not permitted to go to the bathroom and made to defecate in his clothes where he was sleeping.

- [4] At the commencement of the hearing, counsel for the defence applied to amend the grounds to include an objection to the admission of the charge statement.¹ Leave was granted and an Amended Grounds for Voir Dire was filed on 27 November 2024.

Prosecution Case

- [5] PW1, Constable Josefa Kama, was the arresting officer. He has 16 years with the Fiji Police Force. On 14 September 2023 he began work at 7am. He was briefed and advised of a case of interest being the murder of Ms Chand Kaur. His team was tasked with going door to door and speaking to neighbours in the area in order to collect evidence regarding the perpetrator of the alleged murder. At about 7pm that evening they were further briefed and he was given the task of finding the suspect who by this time was identified as the accused – based on evidence from CCTV footage and witnesses. He and his team went to the Nakasi area to search for the accused. It was known that the accused's girlfriend was living in that area. A youth advised PW1 that he had seen the accused getting into a vehicle to travel to Suva. The team went immediately to Suva but could not locate the accused. They returned to Nakasi and saw the same youth at the Nakasi Police Station who informed them that he had seen the accused 5 minutes earlier with a female. PW1 knew the female and was aware where she lived. They immediately got into a police vehicle to travel to the house. This was about midnight.
- [6] When they arrived at the house, PW1 saw the female sitting outside next to a mango tree. He walked towards her. When he got close he saw the accused was sitting next to her leaning on the mango tree. They were drinking alcohol. PW1 stated that he identified himself as a police officer and indicated that he was arresting the accused. PW1 then grabbed the accused's trousers from the back, around the waist. He believed that the accused was drunk as he could smell alcohol on him. He informed the accused of his rights and told him he was arresting him for murder. He then took the accused to the police vehicle. He and another officer drove the accused to the old Nakasi Police Station - the accused was taken to the old Nakasi Police Station because the cell block in the new Nakasi Police Station was not yet operational.

¹ The initial grounds were confined to the caution interview.

- [7] They arrived at the police station at about 12.15am and he handed the accused over to PW3. PW1 then went back to Nausori Police Station and went off duty. He stated that he did not threaten or assault the accused at any time.
- [8] In cross-examination, PW1 denied assaulting the accused, denied slamming the accused's head against the wall at the old Nakasi Police Station, denied kicking the accused and denied putting handcuffs on the accused. He also denied that the accused was made to defecate in the cell – PW1 stated that there was a bathroom inside the cell.
- [9] In re-examination, PW1 stated that he did not use handcuffs when he made the arrest and took the accused to the police station.
- [10] PW2, PC Epeli Rikawai, has been in the Fiji Police Force for 5 years. He was on duty on 14 September 2023 and was in the same team as PW1. He was with PW1 at the time of the arrest and confirmed that handcuffs were not used. He also confirmed that the accused had been drinking. He stated that the accused was informed of his rights including the right to consult a lawyer. He denied there were any assaults or threats of any nature on the accused.
- [11] PW2 was also the charging officer. He conducted the same on 16 September 2023 at the CID office at Nausori Police Station. The interview was conducted in the Itaukei language. The questions and answers were typed on the computer in real time. After the charge statement was completed, an English translation was then made by the same officer. Both documents were produced as **Prosecution Exhibits 1 and 1A**. PW2 stated that there was no threats or assaults or intimidation of any kind during the taking of the charge statement.
- [12] In cross-examination, PW2 denied any allegation of assaults, threats or intimidation at the time of the arrest. Questions then turned to the charge statement. He confirmed that the content was true and correct. He was referred to question 14 of the English translation which reads, '*Was there any assault done to you during your charge*'. The answer was recorded as '*IO*'. The Itaukei version records the same question in Itaukei and the answer is recorded as again '*IO*'. It was put to PW2 that the charge statement correctly recorded the accused's answer. PW2 stated that the answer was misspelt and should have read '*NO*' and '*sega*'.

- [14] In re-examination, PW2 stated that he was typing at the same time he was asking questions and overlooked the error. He stated that until the error was pointed out to him in cross-examination he had not picked it up. He stated that question 15 would not have been asked if the answer to question 14 was yes.
- [15] PW3, PC 7055 Maikeli, has been in the Fiji Police Force for 24 years. He was on duty at the old Nakasi Police Station on the evening of 14 September 2023. He started his shift at 11pm and finished at 7am. He stated that at 12.10am on 15 September, PW1 and his team brought in the accused. He stated that there was no other person, prisoner or police officer, at the Nakasi Police Station at that time. The accused was handed over to PW3. He searched the accused and then locked the accused in the cell. He stated that there was a mattress (and blanket) and toilet inside the cell. He stated that there was no threats or assaults on the accused by any officer. He stated that he did not handcuff the accused and he was not brought in with handcuffs. He checked on the accused every half hour during the evening to make sure that he was sleeping. He stated that when the accused arrived he was healthy and had no injuries and he made no complaints. He stated that the accused spoke harshly to the officer stating that he wanted to go home. PW3 told the accused to be quiet. PW3 finished his shift at 7am - the accused was still in the cell.
- [16] In cross-examination, it was put to PW3 that a prisoner called Jeke, was in the cell when the accused had been brought in – Jeke had been locked in the cell on 12 September and was not released until 1.45pm on 15 September (as per the records for the cell block and the Station Diary). PW3 denied this, stating that only the accused was in the cell that night. He was unable to explain the record in the Station Diary.
- [17] I drew PW3's attention to his own notes in the diary and a reference to 2 other prisoners. I enquired whether those prisoners were in the same cell as the accused. PW3 stated that they were moved to a different cell to the accused.
- [18] PW4, PC 6873 Ilimotama, has been with the Fiji Police Force for 25 years. In September 2023, PW4 was stationed at the new Nakasi Police Station. He was on duty on 15 September 2023 and was directed by a senior officer to travel to the old Nakasi Police Station to collect the accused for the first hour procedure. Three officers travelled with him for this purpose. They arrived at about 10.45am. The accused was released to them. PW4 stated that the accused was acting in a normal manner and made no complaints. The accused showed no visible signs of any injuries. PW4 stated

that they were chatting with the accused in a normal manner during the trip to the new Nakasi Police Station.

- [19] The first hour procedure was conducted between the accused and a Legal Aid Commission lawyer (PW7) inside the charge room. Other police officers were present. PW7 arrived at about 11.45am and spoke with the accused. After which, the officers then escorted the accused to the Nausori Police Station. They were directed by Sergeant Mesulame to take the accused to the Nausori Medical Centre for a medical examination. They did so and then returned back to the Nausori Police Station at about 1.10pm. PW4 stated that there were no threats, assaults or intimidation made to the accused. PW4 handed the accused over for interview.
- [20] In cross-examination, PW4 accepted when referred to the old Nakasi Cell Book that a Jeke had been locked in the cell on 12 September 2023 and was not released until 1.45pm on 15 September 2023. He accepted that Jeke must have been present when they arrived at the cell at 10.45am. He denied that the accused complained of headaches or chest pain or that the accused had been kept in handcuffs. He further denied that the accused had been refused his request to be taken to the hospital.
- [21] PW5, DC5181 Wilfred, has 10 years experience in the Fiji Police Force. He was on duty on 15 September 2023. He was one of the three officers that escorted the accused from the old Nakasi Police Station to the new Police Station, then to Nausori Police Station and then for medical examination. He stated that the accused was treated properly and was acting normally. When they picked him up from the old Nakasi Police Station, he and the accused were joking and sharing stories. There was no complaints of threats, assaults, injuries etc. At the new Nakasi Police Station, they all sat in the charge room - there is a CCTV camera in the charge room which was operational at the time. He stated that when they went to the Nausori Medical Centre, two officers went with the accused - Sergeant Mesulame went in a separate vehicle.
- [22] PW5 sought to tender the medical report. There was an objection from the defence. Mr Varinava stated that the medical report disclosed to him was dated 18th September whereas the document that had been produced by PW5 was dated 15 September. He complained that the document had not been disclosed earlier. Mr Lal confirmed that there had been an oversight by the prosecution. Mr Varinava perused the medical report and subsequently withdrew the objection.

- [23] In cross-examination, PW5 denied that the accused was complaining of headaches or chest pain when picked up from the old Nakasi Police station. He denied allegations of assault, intimidation, or threats.
- [24] PW6, Dr N Ali, conducted the medical examination on 15 September 2023. It was organised by the police to assess whether the accused was fit to be interviewed. The medical assessment started at 1.09pm – all three officers were present in the examination room. Dr Ali stated that the accused had claimed that he was assaulted at the Nakasi Police Station – the assault allegedly involving a punch to his right chest and head. On examination, Dr Ali noted a GCS score of 15 over 15 which means alert and conscious. She also identified a bruise on the posterior back following examination of the head and chest. She described the bruise as very small and superficial and was inconsistent with the allegation of being kicked and beaten repeatedly by the police, particularly with boots. She would have expected more injuries on examination if this had been the case. She was unable to identify the age of the bruise and stated that the assessment was completed at 1.16pm. The medical report was produced as **Prosecution Exhibit 2**.
- [25] In cross examination, Dr Ali accepted that a bruise could be caused by a kick or a punch.
- [26] PW7, Ms Georgina Volovola, is employed as a solicitor with the Legal Aid Commission. She has been practicing law for almost two years. She started with LAC in April 2023 and started practicing as a lawyer in January 2023. She attended the first hour procedure with the accused on 15 September 2023 at Nakasi Police Station. By this time, she had been with LAC for about five months and had attended about 50 first hour procedures. She met with the accused in a room at the police station. Other police officers were in the room, but she was able to have a private conversation with the accused. She stated that the accused denied the allegations. She informed the accused of his right to counsel, his right to remain silent, to a phone call and to meals if kept for eight hours or longer. She stated that the accused understood his rights.
- [27] She stated that the accused appeared to be scared. He kept denying the allegations and mentioned to her once or twice that he had been assaulted by the police. She could not recall the details. PW7 stated that the normal procedure when this occurs is to advise the police officers to record this in writing, but she did not inform the police officers as she did not know the practice at the time. She did not notice any injuries

on the accused. She stated that the accused informed her that he needed medical attention and that she told the police officer that the accused wanted medical attention. After this, she returned back to her office. In cross-examination, PW7 stated that this was her first murder case and she did not know the procedure at the time.

- [28] PW8, DC 5475 Peceli Galovakadua, and PW9, Inspector 3390 Lasaro Mataitoga, gave evidence regarding the caution interview and reconstruction of the crime scene. PW8 was the interviewing officer. He was directed by the crime officer to be the interviewing officer. He stated that PW9 assisted him with the interview. It was video recorded at Nausori Police Station. It commenced on the afternoon of 15 September 2023 and continued into 16 September 2023. There were three sessions on 15 September 2023, from 3.36pm to 6.18pm, with breaks at 3.55pm to 4.15pm and from 4.41pm to 5.35pm. The next morning, a reconstruction of the scene was conducted with the accused and PW9. A video recording was made of the reconstruction. Both were conducted in the Itaukei language. The video recording discs (two of them) were produced into evidence by consent as **Prosecution Exhibits 6A and 6B**.
- [29] The caution interview resumed at 9.45am to 10am on 16 September 2023 and again was video recorded. The discs for the caution interview were produced as **Prosecution Exhibits 3A and 3B**. The written Itaukei version of the caution interview and the English translation were produced as **Prosecution Exhibits 4A and 4B**. The written Itaukei version and English translation for the reconstruction scene were produced as **Prosecution Exhibits 5A and 5B**. PW8 denied that there was any assaults, intimidation or threats either by him, PW9 or any other police officer. The accused was informed of his rights regularly and behaved normally and was even, at times, friendly with the police officers. During the breaks, the accused was taken back to the cells to rest.
- [30] In cross-examination, PW8 accepted that in the first two sessions on 15 September 2023, the accused made no admissions. It was put to the officer that the accused was threatened, assaulted and told to make things easier on himself by admitting the offending. It was pointed out that at page 23 of the English translation, the accused had told the officer that he had been assaulted and that he had a headache from having his head hit against the wall. It was put to the officer that the interview still proceeded despite these allegations. He was asked whether this was unfair to which the officer accepted that it was. It was also put to the officer that where an accused makes an admission, the appropriate protocol as per standing orders is to take the accused to the

most senior officer in the police station. PW8 stated that the senior officer was involved in the investigation and as such the accused was taken before a JP. In re-examination, PW8 stated that at the beginning of the interview, the accused had stated that he was not sick and was able to be interviewed.

- [31] PW9 has been in the Fiji Police Force for 24 years. He was the investigating officer in this case and assisted PW8 with the interview. He stated that he would ask questions if the interviewing officer missed questions. He stated that the standing orders allowed investigating officers to take part in the interview process but not in the charging of the accused. PW9 described the accused's behaviour as not stable and sweating during the interview. He stated that he was not present with the accused during the breaks as the accused was taken back to the cells. He too confirmed that there was no assaults, threats, intimidation or promises made to the accused during the interview or reconstruction. In cross-examination, he denied that he had told the accused to make things easier by admitting the offending. He appeared to accept that standing orders required that an interviewing officer not be part of the interview process.
- [32] In re-examination, it appears that PW9 reverted to his original position that it was appropriate for an investigating officer to be involved in the interview process. With respect to the transcript of the interview where the accused said he was hit on page 23, the police officer advised that the accused did not say who had hit him.
- [33] The last prosecution witness, PW10, was Dr Ashneel Nand, a medical practitioner. Dr Nand examined the accused on 18 September 2023 at 11.07am at the request of the police. There were two police officers present during the examination. The examination lasted four minutes. PW10 took a history from the accused. The accused claimed to have been assaulted by the police. However, Dr Nand stated that the accused was well and was cooperating. He stated that the accused complained of pain and that the doctor examined the sites where the accused complained of pain. One such site was the posterior chest wall where he noticed a bruise and identified this on a diagram. PW10 did not believe it possible that the bruise was caused by a punch or kick. He stated that the bruise was about three to seven days old. He stated that if the accused had been assaulted multiple times, there would be bruising and swelling to show for this. His medical report was produced as **Prosecution Exhibit 7**.
- [34] PW10 stated that the police were present during the examination as there were difficulties communicating with the accused because the accused's first language is

Itaukei. He stated that he normally provided a description of the assault where the pain was, but did not do so here. In response to questions from the Court, PW10 stated that they were having resource issues at the time of the assessment – they were operating from a tent. He stated that ordinarily he would have recorded a full description of the assault and the sites of pain, but did not do so here, possibly as a result of resource issues and time constraints at the time.

Defence case

- [35] The defence called two witnesses, being the accused and Jeke Naitayaga.
- [36] The accused, DW1, stated that on 15 September 2023, he was drinking alcohol with his cousin, and others, at Nakasi. A police officer arrived, grabbed him by the pants, and along with another police officer, took him to the police station. They did not explain the reason for grabbing him or show any ID. The police officer was not in uniform. He stated that they made threats to him.
- [37] When he was taken to the old Nakasi Police Station, he states that he was assaulted. He was punched and kicked to his body and chest. His head was pushed against the wall. They kept him handcuffed and put him in a cell. He could not go to the washroom because of the handcuffs and defecated in his clothes. He stated that a cellmate, Jeke, cleaned him. The next morning he saw his uncle, Ilimo, who is a police officer. He asked his uncle to uncuff him and take him to the hospital. He also informed his uncle that he wished to make a complaint against the police for the assault. His uncle told him that he could not report the matter. He was taken to the new Nakasi Police Station for the first hour interview. He told the lawyer that he was assaulted and that he wanted to go to the hospital. The lawyer explained his rights to him. He was then taken to the Nausori Police Station and was told that it would be difficult for him if he delayed things. They took him to hospital and he saw a doctor who he told that he had been assaulted. He wanted to provide more details to the doctor but the police were making frowning faces at him and he felt afraid to do so. He did not want any more problems from the police. When he got back to the Nausori Police Station he said he had a headache and wanted to lie down. They said it would go quicker for him if he did the interview. He, therefore, agreed. He was having headaches and chest pain and took two breaks during the interview to lie down because of this. He also had pain to his ribs and head. During the third session he confessed to the crimes simply to make it

easier so they would not hurt him. With respect to the reconstruction, he was told where to stand by the police before the video started and told what to say.

- [38] In cross-examination, the accused accepted that he was not assaulted when arrested, and he was not assaulted at the new Nakasi Police Station or at Nausori Police Station. The only assaults occurred at the old Nakasi Police Station. He stated that he was threatened at the other police stations. He acknowledged that this was contrary to the Amended Voir Dire Grounds. He was asked to describe in detail the assaults at the old Nakasi Police Station. He stated that he was punched five or six times and kicked once to his back causing him to fall down. His head was pushed against the wall. These assaults caused him headaches and pain to his chest. He stated that when he was sitting with the LAC lawyer he was not really listening as he was in pain at the time. When it was put to him that he was taken to the medical centre when he had requested this, the accused denied this stating that he was only taken when the police wanted to do so. It was put to the accused that he could have kept denying the crime but did not do so. The accused stated that he was told to make it easier by confessing. He accepted that he had enough breaks and he accepted that when he was taken to the Magistrates Court he did not complain about any assault.
- [39] DW2, Jeke Naitayaga, stated that he was in the old Nakasi Police Station cell from 12 September 2023 and was at the cells when the accused was brought in at about midnight on the evening of 14 September 2023. He stated that he did not know the accused before that time, but he saw the accused being assaulted by the police. One of the police officers told DW2 to turn away and go to sleep. When DW2 woke up there was silence and he saw that the accused had urinated and defecated in his clothes. He stated that he helped to clean the accused as the accused was in handcuffs.
- [40] In cross-examination, DW2 explained that he was in the cell for questioning about possession of illicit drugs and accepted that on 13 September he had been taken to the new Nakasi Police Station for an interview with the police. He accepted there was a washroom in the cell at the old Nakasi Police Station. He stated that he saw the accused being punched and stomped. He did not see him being kicked. He stated that it was dark in the cells but there was a light and he could see the assault because it was under the light. He did not see any injuries on the accused because the accused had his shirt on. He heard the accused's head bang against the cell (he described the cell as wooden) and could hear the sounds of punches after he was told to turn away and go to sleep. He agreed that this occurred multiple times, more than 10 times. He also

acknowledged that he did not lodge a complaint against the police and denied that he was making this up.

[41] I enquired from Mr Lal whether the prosecution disputed that DW2 was in the cell at the same time as the accused. Mr Lal stated that the prosecution did not dispute this.

[42] The defence then closed its case.

Relevant provisions and legal principles

[43] The rights of persons arrested or detained are set out at s 13 of the 2013 Constitution. The relevant parts of the provision read:

(1) Every person who is arrested or detained has the right—

(a) to be 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;

[44] A summary of the relevant principles for consideration of the admissibility of confessions by accused persons was set out by Ratuville J in *State v Nasau* [2024] FJHC 186 (22 March 2024) as follows:

33. *The principles relating to voir dire hearings are well settled and were discussed in the case of State –v- Nakauyaca – Voir Dire Ruling [2020] FJHC 825; HAC 283 of 2019 (9 October 2020).*

34. *The law was discussed from paragraphs 6 to 9 of the judgment as follows:*

“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 [1979] UKHL 3; (1980) AC 402. This is a matter of over 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 Rawaga and Segrán 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 [1979] UKHL 3; [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."

35. *The Court of Appeal also discussed this in the case of Josateki Lulu v State [2016] AAU 43/11 (HAC 62/10S) 29 November 2016 where the Court stated as follows:-*

"In assessing weight and value of a confession, assessors should take into consideration all circumstances in which it was made, including allegations of force, if true. Trial judge is bound to place a defence challenging the caution interview on the basis that D simply agreed to what the police wanted him to admit due to persistent physical assault already inflicted upon him and a fear of similar assault in the future by police, to evaluate probative value and weight to be attached to the caution interview..."

Decision

- [45] The accused was interviewed by police on 15 and 16 September 2023. There were three interview sessions on 15 September. The accused denied the offences in the first and second session but made full admissions in the third session. He agreed to be involved in a reconstruction of the crime scene on 16 September during which he made admissions. There followed a further interview and the charge statement, during which he again made admissions.
- [46] The prosecution bears the burden to demonstrate beyond reasonable doubt that the admissions by the accused during the interview, reconstruction and charge statement were obtained voluntarily and that there was no unfairness used by the police.
- [47] The evidence from the accused is that that he was assaulted at the old Nakasi Police Station. He states that he was punched several times to his body (ribs/chest), kicked once to the back and had his head slammed against the wall. He says he had pain to his body and headaches after the alleged assault. He says he complained to multiple persons about the assault, including the doctors who examined him before and after his police interview. He says the doctors did not examine him properly. He says that he was scared during the interview that he would be assaulted again. He says that he

was threatened multiple times with being assaulted, from the time of his arrest up to the time of the interview. He was also promised that things will go easier and quicker for him if he confesses. He says he was struggling with the pain and headaches from the assault when he was interviewed and charged.

[48] The police officers deny assaulting the accused or seeing any assault. They also deny making any threats or promises. Counsel for the prosecution makes the valid point that the accused has walked back from many of the allegations contained in the Amended Grounds for Voir Dire. For example, the accused alleges in the document that he was assaulted when arrested as well as at the new Nakesi Police Station and the Naurori Police Station. In cross-examination the accused accepted that he was only, allegedly, assaulted at the old Nakasi Police Station. Allegations in his Grounds that he was not given meals whilst in custody do not appear to have been pursued at the hearing.

[49] Having observed the evidence from the witnesses for the prosecution and the defence, and carefully considered the exhibits produced by the prosecution, I am left with a reasonable doubt that the accused made his admissions voluntarily during the interview, scene reconstruction and the charge statement. Although there are contradictions in the accused's evidence, it is the following evidence that raises a reasonable doubt:

- i. The accused told a number of persons that he was assaulted. He did so very early on after the alleged assault. He told PW7, the LAC lawyer who conducted the first hour procedure a matter of hours after the alleged assault. PW7 stated that the accused appeared to be scared. Given the allegations and the risk of the accused making involuntary admissions, the accused ought to have been strongly advised by the lawyer not to attend any police interview unless supported by a legal representative. It does not appear that this advice was provided to the accused.
- ii. The accused complained of the assault to the two doctors who examined him on 15 and 18 September 2023. The record made by Dr Ali on 15 September 2023, again only hours after the alleged assault, reads, '*claim that he was assaulted by police officers...punched (R) chest and head yesterday. Complains of pain @ affected site*'. Dr Nand provided the following

description on 18 September 2023 of the accused's history, *'claims to be beaten by police officer'*.

- iii. Both medical practitioners identified a bruise/abrasion on the accused's back. This is not necessarily consistent with the alleged assault described by the accused. Both doctors made this point in their evidence. However, I am not satisfied that either doctor undertook a thorough enough examination or took sufficient care or time to obtain a full understanding or description of the alleged assault from the accused. The examinations were brief and the descriptions of the alleged assault sparse.
- iv. I do not lose sight of the fact that the accused expressly acknowledged at various times during the interview and charge statement that he was not assaulted, threatened or forced to provide his answers. That needs to be weighed against the fact that the accused also made several comments during the interview and charge statement that are consistent with the alleged assault. During the first interview session on 15 September 2023, the accused stated, *'If they had called and told me to come to the station [before his arrest], I would have gone. They said I was fleeing. That's why they came at night, so they can assault me...'*. At the beginning of the third session, during which he first made his admissions, the accused was asked, *'Are you suffering from any pain?'* He replied, *'Only the hitting from last night...I am having headache on this side from last night by hitting on the wall'*. During the charge statement, the accused was asked *'Was there any assault done to you during your charge?'* to which it is recorded *'IO'* (which means 'yes' in the Itaukei language. PW2 stated that this was misspelt and that the accused had in fact stated, 'no'. However, given 'IO' is found in both the itaukei and English version, I am satisfied that at the very least this potential contradiction adds to the doubt that I have as to whether the admissions were given by the accused voluntarily.
- v. There is also the potentially corroborating evidence from DW2 who the State accepts was present in the cell at the material time and was in a position to have observed any assault. Is DW2 an independent witness? There is no evidence that DW2 knew the accused before the assault and it is DW2's evidence that the time of the alleged assault was the first time he saw the accused. Does that fact that DW2 was in a police cell for questioning about his own potential criminality taint his evidence? Of itself that is not sufficient

to demonstrate a bias against the police or for a fellow prisoner but I accept that at the very least it raises a concern. That said, DW2's evidence was largely consistent with the accused in respect to the alleged assault, the fact that the accused had handcuffs on in the cell and that he had defecated in his clothes.

Conclusion

[50] The accused made complaints to multiple persons of his assault on 15 September 2023. He complained to the LAC lawyer at the new Nakasi Police Station during the first hour procedure. He complained to the doctor who examined him before his interview. He complained to the police officers at Nausori Police Station during the interview. Add to this, the fact of the fresh injury identified on medical examination and the corroborating evidence from the other prisoner in his cell. The net effect of all this is that the prosecution has failed to demonstrate beyond reasonable doubt that the admissions should be admitted. Put another way, I am not sure that the admissions were made voluntarily by the accused and as such it would be unsafe to admit this evidence.

[51] I, therefore, hold that the caution interview, the scene reconstruction and the charge statement are not admissible in evidence.



D. K. L. Tuiqereqere
JUDGE

Solicitors

Office of the Director of the Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused