

IN THE FIJI COURT OF APPEAL
Criminal Appeal No: 18/90

15

BEFORE THE HON JUSTICE MICHAEL M HELSHAM
PRESIDENT OF THE FIJI COURT OF APPEAL
AND THE HON SIR MOTI TIKARAM
RESIDENT JUDGE OF APPEAL
AND THE HON MARI KAPI
JUDGE OF APPEAL

THURSDAY THE FIFTH DAY OF MARCH, 1992 AT 9.30 A.M.

BETWEEN:

KULINIASI VASU

APPELLANT

- VS -

S T A T E

RESPONDENT

MR KULINIASI VASU

MS N SHAMEEM &
MS S KAIMACUATA

IN PERSON

FOR THE RESPONDENT

: The third way in which the case against the accused was proved was by means of a confession. The confession dealing with this aspect is to be found on pages 78 and 79 of the record. It was admitted after a hearing on the voire dire which is recorded at pages 33 to 37. The Supplementary record of the Judge's reasons for Judgment dealing with this aspect is to be found on pages 10 to 14 of the record.

One matter in the submissions handed to the Court this morning which we feel should be dealt with, is the assertion that the statements of the accomplices were said to have been used as part of the proof of identification of the accused. They were statements made by the accomplices when they were questioned by the police after their arrest,

The learned trial Judge dealt with this aspect of the case at pages 15 and 16 of the record of his reasons for Judgment. He said, and I quote:-

" While dealing with the evidence of Kitione and Epeli, I must warn you that in order to discredit their evidence the learned State Counsel put to them the statements they had made to the police where they had implicated the accused completely.

Now I must warn you that whatever you came to know of their statements to the police, you must not regard as evidence against the accused. Remember that, You should only regard them as proof of inconsistent statements made by those two witnesses on an earlier occasion. Those statements are relevant only to discredit their evidence in this court and not as evidence."

A warning which was correct and entirely adequate.

: Finally, on the question of identification there was the evidence given by the accomplices of the accused which implicated him directly and which is to be found at pages 66, 67 and 68 of the record.

For these reasons this Court has not the slightest hesitation in affirming the decision reached by the Court and dismissing the appeal on that basis.

The accused also raised the ground of severity of sentence, he was sentenced to 7 years imprisonment. It is appropriate to note that he was convicted at the same trial of a number of other offences, the more serious of which was Rape for which he received a sentence of 6 years.

We feel that the accused is fortunate that the State did not appeal against the severity of the sentence and seek to have it increased. We have no hesitation in dismissing the appeal on the grounds of severity.

Geirvanil Lufeshe

PRESIDENT

FIJI COURT OF APPEAL