

IN THE COURT OF APPEAL, FIJI ISLANDS  
ON APPEAL FROM THE HIGH COURT, FIJI ISLANDS

CRIMINAL APPEAL NO. AAU0047/99S  
(Suva High Court Criminal Case No. HAC008/99)

BETWEEN:            FREDERICK KATAFONO            *Appellant*

AND:                THE STATE                                *Respondent*

Coram:              The Rt Hon Sir Maurice Casey, Presiding Judge  
The Hon Sir Rodney Gallen, Justice of Appeal  
The Hon Justice John E. Byrne, Judge of Appeal

Hearing:            Wednesday 16 May, 2001

Counsel:            Appellant in Person  
Mr. J. Naigulevu for the Respondent

Date of Judgment: Thursday 24 May 2001

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**JUDGMENT OF THE COURT**

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After a trial in the High Court at Suva Frederick Katafono was convicted on 27 July 1999 of robbery with violence of a jeweller's shop in Suva and was sentenced to 5 years' imprisonment. The prosecution case was that he was the driver of a getaway car for his associates who carried out the robbery. He pleaded guilty to a charge of unlawful use of the vehicle, which he had taken after it had been parked by its owner, and was sentenced to a concurrent prison term of four months for this. He appeals against his conviction on the robbery charge, his main ground being that his confessional statement made to the police (which was virtually the only evidence implicating him) should have been rejected by the Judge as having been induced by the promise of a senior police officer to the effect that he

would not be charged and nothing would happen to him if he co-operated and helped to recover the stolen property. He claimed that relying on this he told them about his part and took them to where some of the jewellery was handed over.

The appellant was not represented by counsel at his trial, explaining to us that although he was given the opportunity to obtain a lawyer he could not afford one and conducted his own defence. He challenged the admissibility of his statement and a trial within a trial was held in the absence of the assessors, in which the Judge accepted the police evidence that there had been no inducement, and he allowed the statement in. He rightly observed that he had to be satisfied beyond reasonable doubt that it was voluntary, in the sense that it had not been obtained by hope of advantage held out by a person in authority, citing Ibrahim v R [1914] AC 599, 609 and other relevant authorities.

In this Court the appellant sought leave to call fresh evidence from a woman he described as his wife. He explained that he did not call her at the trial because he believed she was not a competent witness because of their relationship. We allowed her to give evidence and she was cross-examined by Mr Naigulevu. We think that her evidence may be believed by a trial Judge and assessors, and if so, that it could support the appellant's claim of inducement on which he relied in order to have the confessional statement excluded. In these circumstances we are satisfied in the interests of justice that there should be a new trial to enable this evidence to be considered along with all the other relevant testimony. We intimated this to counsel without seeing it necessary to proceed further with the appeal, nor do we think it appropriate at this stage to discuss the proposed witness's evidence. We add that it will be very much in accused's interest for him to have legal aid on any re-trial.

### **Result**

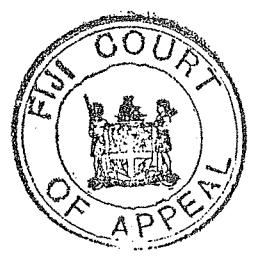
The appeal is allowed and a new trial is ordered. The appellant will be remanded in custody to appear on 15 June 2001 in the High Court at Suva and he may apply for bail to that Court.

*M. Casey*

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Sir Maurice Casey  
Presiding Judge

*R. Gallen*

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Sir Rodney Gallen  
Justice of Appeal



*John E. Byrne*  
.....  
Justice John E. Byrne  
Judge of Appeal

Solicitors:

Appellant in Person  
Office of the Director of Public Prosecutions, Suva for the Respondent