

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU0111 OF 2018
[Suva Criminal Action No: HAC 403 of 2016S]

BETWEEN : ASESELA NIUBASAGA

Appellant

AND : THE STATE

Respondent

Coram : Prematilaka, RJA
Mataitoga, JA
Qetaki, JA

Counsel : Appellant in person
Mr R Kumar for the Respondent

Date of Hearing : 6th July, 2023

Date of Judgment : 27th July, 2023

JUDGMENT

Prematilaka, RJA

[1] I agree with Qetaki, JA that the appeal should be dismissed.

Mataitoga, JA

[2] I agree with Qetaki JA. that the appeal be dismissed.

Qetaki, JA

Background and facts

[3] This is a renewal of the appellant's application to appeal against his conviction in the High Court refused by the single judge (Prematilaka, RJA). The appellant had been indicted in the High Court on a single count of aggravated robbery contrary to section 311 (1) (a) of the Crimes Act 2009 committed with others on 28 October 2016 at Samabula in the Central Division.

[4] The charge against the appellant was as follows:

Statement of Offence

Aggravated Robbery: *Contrary to section 311(1) (a) of the Crimes Act 2009.*

Asesela Niubasaga and Samisoni Waqavatu with Others on the 28 October 2016, at Samabula in the Central Division robbed one Nitya Nand Shankar and stole 1 x steel safe valued at \$1,000.00(FJD) assorted liquor valued at \$1,100.00, assorted jewelries valued at & 15,000, cash of AUD \$4,000, 1 couch brand bag valued at \$2,000.00, assorted clothes valued at \$3000.00, 1 x Samsung mobile phone valued at \$8000.00, 1x Suzuki van registration FHH70 valued at \$8000.00, all to the total value of \$43,200.00, the property of Nitya Nand Shankar.

[5] The facts as stated in the learned trial Judge's Sentence (at page 66 of High Court of Fiji Record at page 66) is reproduced below:

"2. The brief facts of the case were as follows. On 28 October 2016, you two and others broke into the complainant's house at Princes Road, Tamavua. You were masked and armed with pinch bars, screw Drivers and cane knives. You two and

your friends tied the complainant and his wife up. You and your friends threaten them not to resist, or they will be hurt. You demanded money and jewelry from them. You then ransacked their house, and stole the items mentioned in the information. You and your friends fled from the crime scene in the complainant's car. The matter was reported to police. You two were cautioned interviewed by police. You both admitted the offence to police. You were later charged, tried and convicted of aggravated robbery."

- [6] The charges against the two accused was of a "joint enterprise". In other words the co-accused were to be jointly liable for the commission of the offences. By nature "joint enterprise" is "when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose", each of them is deemed to have committed the offence (section 46 of Crimes Act 2009).
- [7] After the summing up 12 October 2018, the assessors had expressed a unanimous opinion of guilty against the appellant. The learned High Court Judge in delivering judgment, accepted the unanimous opinion of the assessors. He convicted the appellant on the same day. The appellant was sentenced on 16 October 2018 to 14 years' imprisonment with a non-parole period of 13 years.
- [8] Aggrieved by the decision of the learned trial Judge the appellant tendered a timely appeal against conviction and sentence on 02 November 2018.

Before the single Judge

- [9] There were 8 grounds of appeal urged by the appellant as fully stated in the learned single Judge's ruling at pages 2 and 3. An insight into the facts of the case and the issues contested in this appeal can be gauged from the Summing Up under "The Prosecution's Case" and the "The Accused's Case". For the Defence, paragraphs 19 to 21 states:

"19. On 5th October 2018, the first day of the trial proper, the information was put to both accused, in the presence of their counsels. They pleaded not guilty to the charge. In other words, they denied the allegations against them. When

the prima facie case was found against each of them, at the end of the prosecution's case, when they were called up to make their defence, both of them chose to give sworn evidence in their defence. Accused No.1 called Doctor Archana Prasad (DW3) as his supporting witness. Accused No.2 called no witness. What the accused did was totally within their rights.

20. *The accused's cases were very simple. On oath they both denied the allegations against them. They each said they did not rob the complainant as alleged in the information. In their closing submissions, they appeared to say that no eye witness saw them at the crime scene. They appear to also say that the complainant (PW1) did not identify them, at the crime scene, at the material time. They said, only evidence against them, appear to be their alleged confession to the police, when they were cautioned interview by them.*
21. *However, they ask you as assessors and judges of facts, to ignore and disregard their alleged confessions to the police. They say, this was because the police force the confession of them. They said, the police repeatedly assaulted them and threatened them, and as a result, they allegedly confessed to the police. They said their confessions were given involuntarily by them and without their own free will. They appear to say that the police also fabricated the answers allegedly given by them in the interview notes. As a result of the above, they say the alleged confessions are not true."*

- [10] The learned single Judge in considering the grounds of the application for leave before him, considered grounds 1 and 3 together. Both relate to admissibility of cautioned interview of the appellant recorded on 03 and 04 November 2016 at the *voir dire* inquiry. He stated:

"Contrary to the appellant's submissions there was no medical evidence before the trial judge at the voir dire inquiry to confirm that the appellant had carried some injuries after his arrest by the police. The only evidence available to the trial judge at the voir dire inquiry was that of Doctor. Ashneel Singh (PW6) who had testified that when he examined the appellant on 06 November 2016 he did not observe any injuries. The appellant does not seem to have complained to the doctor of any assault either. Therefore the only evidence of police assault had come from the appellant at the voir dire."

- [11] The learned single Judge also referred to the learned trial Judge's *voir Dire* Ruling at paragraphs 5-8, where the dispute between the parties on the status of the cautioned interview statements were "*hotly debated*" by the prosecution and the co-accused. At paragraph 8 the learned trial Judge remarked:

“8. After looking at all the evidence, I accepted the prosecution witnesses’ version of events, and ruled the accused’s caution interview statements admissible evidence. However, I said, the acceptance or otherwise of the accused’s alleged confessions, will be a matter for the assessors at the trial proper.”

[12] Further, the learned trial Judge cited the case Ganga Ram & Shiu Charan v R Criminal Appeal NO. AAU 0046 of 1983 (13 July 1984), where this Court held:

“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 of prejudice or inducement by offer of some advantage- what has been picturesquely described as “the flattery of hope or tyranny of fear”. Second, even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behave, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or unfair treatment.”

[13] Having considered the materials available to the trial Judge at the *voir dire* inquiry and his analysis of the evidence including those of the appellant, the learned single Judge stated: *“I cannot see these two grounds of appeal succeeding in appeal”*, meaning grounds 1 and 3.

[14] Next, the learned single Judge dealt jointly with grounds 2,4,5,6 and 7 of the grounds for leave to appeal. The gist of these grounds is the unreasonableness of the conviction being based on the cautioned interview of the appellant. The learned single judge considered and discussed the issues raised by these grounds, particularly the following aspects of the appellant’s arguments:

- (i) appellant’s arguments built on the medical evidence that was led on his behalf at the trial proper namely that of Dr. Archana Prasad who deputised for Dr. Edwin Kumar that the police officers hit him with batons and also kicked him:

- (ii) the appellant's complaints that the observations of Dr. Kumar (as explained in his absence by Dr. Archana Prasad) substantiates his allegations of police assault which led him to confess the crime, therefore, he never confessed voluntarily;
- (iii) the learned trial Judge's directions at paragraph 29 of the summing up on how the assessors should approach the cautioned interviews;
- (iv) the learned trial Judge's directions at paragraphs 31-34 of summing-up to the assessors on the medical evidence.

[15] In conclusion on the above, the learned single Judge stated (paragraph 18 of ruling):
"Therefore, one cannot say that the trial Judge had not adequately analysed medical evidence alongside the totality of the other evidence to the assessors."

[16] The appellant made allegations that Dr. Singh who examined him on 06 November 2016 had acted in collusion with the police not to have reported any injuries that had been seen by Dr. Kumar on 08 November 2016. To this claim, the learned single Judge found that there is nothing in the summing up or judgment to indicate that the trial counsel acting for the appellant at the trial, who acted on instructions of the appellant, had sought to discredit Dr. Singh on that basis.

[17] The learned single Judge considered the cases cited in support of the appellant's arguments: **Nacagi v State** [2015 FJCA 156, AAU 49,2010 (3 December 2015); **Sugu v State**, AAU 44 of 2012; 27 May 2016 [2016] FJCA 69 had followed **Nacagi; Rahiman v State** CAV0002 of 2011; 24 October 2012 [2012] FJSC 24; **Kacivakawalu v State** [2018] FJCA 202; AAU0053,2015 (29 November 2018) affirmed by the Supreme Court in **Kacivakawalu v State** [2019] FJSC 28; CAV 0009,2019 (31 October 2019). He concluded:

*"As pointed out earlier the trial Judge had considered and analysed the medical evidence adequately in the summing – up and in the judgment and there is no reason to disturb the verdict of guilty based on **Nacagi and Sugu** decisions."*

Before the full court

- [18] The appellant filed a Notice for leave to appeal on the renewal grounds of conviction and sentence dated 08 January 21, and renewal ground of conviction and sentence was filed on 13 January 21.
- [19] The appellant filed a detailed submissions on 26 October 2022 where he relies on four (4) grounds, two against conviction and two against sentence.
- [20] The grounds of appeal in this Court are:
- (i) *That the learned trial judge erred in law and in fact in failing to remind himself when not fully directing and properly laying before the assessors a main part of the appellant's injuries namely (abrasions). Moreover, Doctor Prasad also highly misled the trial court while addressing the medical findings of Doctor Kumar conducted on 8th November, 2016. That firstly that your appellant still maintains to place his crucial arguments of injuries, which was surely noted in the medical report by Doctor Archana Prasad whom surely deputized for Dr. Kumar on the medical findings.*
 - (ii) *That while adequately observing Dr. Archana Prasad's entire evidence in Court she failed to highly explain or at least describe the meaning of abrasion and how it was relevant and sustained by the appellant during Police interrogation. In this instance, the trial judge had also resulted in misdirecting the lay assessors according to this crucial injury noted in the appellant's medical report.*
 - (iii) *Thus, precisely the sentencing truly erred in fact of falling into a trap of double counting some of the aggravating feature noted in His Lordship's Ruling of Sentence.*
 - (iv) *Therefore, the judge had also applied a wrong principle of sentence, while totally fixing a 13 years non-parole period which is so very close to the appellant's 14 years sentence. In that, it will discourage him to a fair and proper rehabilitation.*

Appellant's case

- [21] The appellant had filed a written submissions "*Submissions of Leave to Appeal on the Renewal Grounds of Conviction and Sentence*" dated 8 December 2022.

- [22] At the hearing, the appellant had indicated his intention to abandon his appeal against sentence. He did so on his own free will after it was explained to appellant that that would result in the dismissal of grounds 3 and 4. Further, that once dismissed, the grounds cannot be pursued again. He was adamant that he will pursue the grounds against conviction only.
- [23] At the trial the appellant pleaded not guilty to the charge of aggravated robbery, and denied the allegations against him with the co-accused. He with the co -accused had maintained that the only evidence against them, was the alleged confession to the police that the alleged confession was given involuntarily by them and without their own free will. However, the assessors had accepted that the confessions were credible and convicted the appellant.
- [24] On new ground 1 against conviction, the appellant is making two distinct allegations. Firstly, that the learned trial Judge erred in law and fact in failing to remind himself when not fully directing and properly laying before the assessors a main part of the appellant injuries namely abrasions. Secondly, an allegation that Dr. Prasad did not effectively impart the essence of Dr. Kumar's medical report's findings. The Court was referred to the learned trial Judge's summing up at paragraph 32. The appellant relies on the medical report of Dr. Kumar who conducted a medical examination and produced a report on the appellant on 8/11/16.
- [25] The appellant also made allegations that Dr. Prasad who gave evidence at the trial misled the Court on the injuries sustained. The appellant stated:

“What the appellant intends to submit here, there was real injuries of (abrasions) in which sustained. While in Police custody at the Samabula Police station and being highlighted in the trial proper by Doctor Achana Prasad. This is a crucial issue by the appellant is that the medical evidence, it is independent evidence.

- [26] That the learned trial judge did not adequately explain to the assessors the nature of "abrasion" the injury he had according to the medical evidence. "Abrasion", is "A wound in which the surface of the skin is rubbed away by blunt trauma" according to the Glossary of Medical Terms.
- [27] What the appellant seems to be saying is that his injuries were "abrasion" and that was why he was taken to the doctor on 8/11/2016. It is submitted by the appellant that Dr. Prasad treated abrasion lightly, that was in her evidence. Commenting on the Summing Up in paragraphs 31-35. The appellant stated:
- "Wherefore in the above summing up and judgment of the learned trial Judge has concluded that the caution statements were made voluntarily without any indication, that he had considered, analysed and accepted or rejected that important medical evidence. The appellant are challenging the decision of the trial Judge to admit his caution statements into evidence, the appellant also challenge the directions given by the learned trial Judge to the assessors in his summing up relating to any view expressed by him on the evidence and their right to disregard their view and form their own inference in facts of the case."*
- [28] The appellant contended that the police assault etc. caused the abrasions and that brutality of the Police caused the appellant to confess, and the confession was given involuntarily based on fear. The confession needs to be excluded from the evidence.
- [29] On the second ground against conviction, the appellant challenges Dr. Achana Prasad's evidence at the trial. The appellant it seems is suggesting that the purpose of medical evidence of an accused, who sought medical attention or examination, is to use the medical findings to provide proof of improper practices such as use of threat of prejudices, force and inducement by offer of some advantage. In other words, to prove or show, that the confession was given involuntarily.
- [30] The appellant cited the case State v Orisi Roko & Others (2001) FJHC 94; HAC 0013 D 2005 (27 November 2001) on the admissibility of records of interview. Two questions needed to be asked: 1. Was the interview statement given voluntarily? 2. Was it given in

oppressive or unfair circumstances? That the onus is on the prosecution to prove voluntariness, lack of oppression and that there was no breach of the constitution.

[31] The appellant alleges that before he was taken for interrogation by crime officer to the Samabula Police Station, there was no particular injuries on his body, but after arrest, being interviewed and charged from 3rd, 4th, 5th to 6th and until taken to Court on 7th of November 2016. The prosecution failed to explain why and how it took more than 48 hours approximately 5 days to produce the appellant to Court. The Court must take note of this breach of constitutional right.

[32] The appellant challenged the Summing up in paragraph 31. The medical report on 8th November 2016 at Samabula Health Centre according to the appellant *"This was the time and day injuries were found on the appellant after the caution interview and charge statement on 3rd and 4th of November 2016.* He argues that the learned trial Judge did not properly analyse the independent medical evidence.

[33] The appellant alleges that the conviction was unreasonable under the circumstances of the case. The appellant's case was built on medical evidence to demonstrate that the confession was not voluntary. However, the medical evidence was not properly analysed before being presented to the assessors.

Respondent's Case

[34] The respondent had filed a comprehensive written submission filed on 29 June 2023 in response to and challenging the 2 grounds of appeal against conviction, and the two grounds against sentence.

[35] The respondent submitted that grounds (i) and (ii) relate to *voir dire* and trial findings as such, its submissions on conviction relate to both and two grounds. It submitted that in view of the two grounds, its submission *"are first tailor made to show the relevant*

procedural timeline or chronology”. The chronology covers the period from the appellant’s arrest to trial, as below.

- [36] **Arrest of appellant:** By his own undisputed evidence, the appellant was arrested from his home at Kalabu Village between 0600 to 0630 hours on 03 November 2016. (See Judges’ Notes, pages 698-699 Record of High Court Vol.2 2 of 2 and page 715 Record of High Court Vol. 2 of 2.)
- [37] **Interview of appellant:** The appellant was interviewed under caution from 1125 hours on 03 November 2016 and he concluded his interview at 1755 hours on 4 November 2016. This indicates he was in Police custody well before the expiry of the 48 hours in Police custody, from his arrest about 0600 to 0630 hours on 03 November 2016, the appellant’s confession had been diligently recorded.
- [38] **First Medical report of appellant:** The appellant was first medically examined by Dr. Ashneel Singh at Raiwaqa Health Center on 06 November 2016 where the independent medical examination shows that the appellant inter alia, had no injuries and was physically fit as per Prosecution Exhibit Number 3 (“*PE3*”) for the trial proper which is contained at pages 311 to 316 of the Record of the High Court Vol. 1 of 2
- [39] **First Production in Court:** The first charge and production on 07 November 2016 before the Suva Magistrates’ Court as presided over by Magistrate Joji Momo, the appellant made no complaints of any Police impropriety while it appears a defence counsel appeared for the appellant and co-accused at the time, outlined as Ms Seruratu (*as per the Record of the Magistrates’ Court* at page 739 of the Record of the High Court Vol. 1 of 3).
- [40] **Second Medical Report of Appellant:** The appellant was again medically examined on 08 November 2016 by Dr. Edwin Kumar at Samabula Health Center and it was found the appellant had an abrasion to his left lateral chest wall and an abrasion on his high right

foot as per Defence Exhibit Number 1 ("DE1") for trial proper which is contained at pages 106 to 110 of the Record of the High Court Vol. 1 of 2.

- [41] Voir Dire: The prosecution had called 5 Police officers as witnesses with a civilian witness Dr. Ashneel Singh during *voir dire*. The appellant testified on his own behalf during *voir dire* while his co-accused Samisoni Waqavatu and his mother also gave evidence at *voir dire*.
- [42] Each of the 5 Police officers denied the allegations of alleged Police brutality, threats, assaults and oppression. Dr. Ashneel Singh despite being robustly cross-examined maintained he had examined the appellant and his co-accused fully on 6 November 2016 but found no injuries on either of them. The trial Judge as a result ruled the caution interview as admissible, in that at *voir dire* no reasonable doubt was created with regard to the admissibility of the appellant's cautioned interview due to Police evidence and independent medical evidence. It follows that the admission of the appellant's cautioned interview into evidence for trial proper was justified.
- [43] Trial: At trial the prosecution had called the victim Nitya Nand Shankar, a civilian witness Arthur Wong and 5 other witnesses together with Dr. Ashneel Singh. Prosecution exhibits tendered at trial had been the co-accused's respective interviews (PE2) which were followed by their respective medical reports of 06 November 2016 by Dr. Ashneel Singh (PE3).
- [44] When a case to answer was made out, the appellant had testified on his behalf at trial and tendered his second medical report into evidence through Dr. Achana Prasad on behalf of the examining Dr. Edwin Kumar, both doctors of Samabula Health Centre. The appellant's co-accused (as defence witness 2) had also given evidence in his defence but had called no other witness / evidence.
- [45] It is the respondent's case that, from arrest to trial, the learned trial Judge had acted within his powers and in accordance with the Rules of the Court. That his conduct of the trial

cannot be faulted, his summing up proper and adequate as well as the directions to the assessors. Also the medical evidence were properly explained by Dr. Singh and Dr. Achana Prasad.

Analysis

- [46] The 2 grounds of appeal against conviction seems to capture fully the same grounds that were raised before the learned single judge, but expressed and couched in different style from those grounds, and reduced to 2 grounds .The grounds may be broken down further as follows:
- (a) The learned trial judge erred in law and in fact in failing to remind himself when not fully directing and properly laying before the assessors the main part of the appellant's injury, that is the "*abrasions*".
 - (b) That Dr. Prasad misled the High Court while explaining Dr. Kumar's medical examination findings conducted on 8 November 2016.
 - (c) Dr. Prasad did not adequately explain, when giving evidence, the meaning of "*abrasions*" injury and how it was relevant and sustained by the appellant during police investigation.
 - (d) That due to (c) above, the trial Judge misdirected the assessors on the crucial injuries noted in the appellant's medical report.
- [47] The issues that the appellant raise in this Court were also raised (in the 8 grounds) at the leave stage. The learned single Judge had ruled on those grounds.
- [48] The case for the appellant is set out in paragraphs [21] to [33] herein, and the case for the respondent at paragraphs [34] to [45] above .The appeal grounds touch on how evidence on the medical examination reports of the examining doctors have been led at the trial, and subsequently, their assessment, analysis, evaluation, interpretations to be placed on the findings and their implications. It is the assessors who are the judges of facts, whose

opinion may or may not be agreed to by the learned trial Judge who is the final Judge of the facts.

[49] I have read the High Court record on the evidences given on behalf of the prosecutions and of the co-accused. I have also particularly focused on the evidences given at the trial by Dr. Singh and Dr. Prasad, who stood in to explain on behalf of Dr. Kumar (Examining Doctor) the content of the latter's medical findings after examining the appellant and the implications of that medical report.

[50] On any appeal against conviction, section 23 (1) (a) of the Court of Appeal Act provides:

"1 The Court of Appeal-

(a) on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal..
(b).....

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal against conviction or against acquittal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has occurred."

[51] I accept the procedural timeline provided by the respondent (paragraphs [36] to [43] above which is of assistance in clearly setting out the chronology of events. On the allegation that the trial Judge erred in law and in fact, I hold, and it is clear from the record that the learned trial Judge properly directed the assessors at paragraph 29 of the summing up on how the assessors should approach the cautioned interviews. He stated:

"29. If you accept the two accuseds' above confessions, you will have to find them guilty as charged. If you reject the two accuseds' above confession, you will have to find them not guilty as charged. It is a matter entirely for you. However, in approaching the two accuseds alleged confession, I must direct you as follows as a matter of law. A confession, if accepted by the trier of fact- in this case, you as assessors and judges of fact- is strong evidence against

its maker. However, in deciding whether or not you can rely on confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements contained in his police caution interview statements? If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If it's otherwise, you may give it less weight and value. It is a matter entirely for you."

[52] It is also clear from the record that the learned trial Judge gave proper directions to the assessors during Summing up (at paragraphs 31-34), on the medical evidence:

"31. Suffice to say that they said that they were arrested by police on 3 November 2016 and were in police custody until taken to court on 7 November 2016. Both appear to say they were taken by police to Raiwaqa Health Centre on 6 November 2016 and were seen by Doctor Ashneel Singh (PW7). Both accused said that the police repeatedly assaulted them while in their custody. As for Aseela, he said he was repeatedly punched in the ribs at Rifle Range Yatuwaqa by the police on 3 November 2016. On 4th November 2016 Aseela said, he was also repeatedly punched by police on the right temple at Samabula Police Station. He said, he was also repeatedly kicked in the ribs. He said police slammed his head to the back of a police vehicle in Colo-i-Suva. Kicked on the ribs by police.

32.....Both accuseds were taken by police to Raiwaqa Health Centre on 6 November 2016 to be medically examined. It must be noted that this was 2 days after their caution interview statements were taken on 3 and 4 November 2015. Dr. Ashneel Singh (PW7) medically examined both accuseds. Dr. Singh said none of the accused made any complaints to him. Nevertheless, he examined them. According to Dr. Singh he found no injuries on them. Doctor Singh tendered the accuseds' medical reports as Exhibit No.3 in the trial. Please, read the reports carefully. On 8 November 2016, Aseela was further medically examined by Dr. Edwin Kumar at Samabula Health Centre. He produced a medical report. However, on the day of the trial, Dr. Kumar was sick. Dr. Achana Prasad (DW3) stood in for him. This was permitted by section 133(5) of the Criminal Procedure Act 2009. Doctor Prasad said, Aseela had no major injuries on him on 8 November 2016. Dr. Prasad said, he only had abrasions. On Aseela's allegation of repeated assaults at Rifle Range and Samabula Police

Station. Doctor Prasad said, she would expect more severe injuries than abrasions. Doctor Prasad tendered Doctor Kumar's medical report of Asesela as Defence Exhibit No. 1.

33. *How you view the prosecutor's version of events as against the accuseds, on the basis of the above evidence, is entirely a matter for you. If you accept the prosecution's version of events, you must find the accuseds guilty as charged. If otherwise, you must find them not guilty as charged. It is a matter for you.*

(c) Accuseds' Cases

34. *I have summarized the accuseds' cases to you from paragraphs 19 to 22 hereof. I repeat the same here. If you accept the accuseds' version of events, you must find the accuseds not guilty as charged you reject the accuseds' version of events you must still consider the prosecution's case as a whole, if you are not sure of the accuseds' guilt, you must find them not guilty as charged. It is a matter entirely for you."*

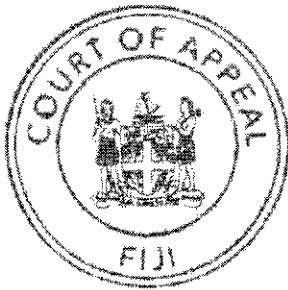
[53] The Court echoes the opinion of the learned single Judge (paragraph 18 of Ruling) to the effect that, one cannot say that the trial Judge had not adequately analysed medical evidence alongside the totality of the other evidence to the assessors. As a matter of law the requirements for the admission of cautioned interview statements are set out in **Tuilagi v State** [2017] FJCA 116; AAU 0090,2013 (14 September 2017) which analyse previous decisions and stated the correct approach to be adopted by trial judges regarding a confession. This case was discussed adequately by the learned single Judge.


[54] On the ground against Dr. Prasad's evidence at the trial, the appellant's expectation, it seems, is that, as accused, the medical examination is intended to demonstrate or give credence to the alleged use of threats, force and inducement by offer of some advantage. In other words, to prove or show, that the accused's confession was not given voluntarily. In this case, the results or findings of medical examinations may have fallen short of the appellant's expectations. Such examinations and reports are made by professionals qualified in the field of medicine. Doctors are bound by rules of professional conduct and ethics, and are accountable for their acts or omissions.

- [55] A doctors evidence or findings can be challenged but on good grounds and justifiable grounds. The most persuasive way in which to do so is via the trial process, by cross-examination and/or re-examination, or by calling another expert witness, whichever is appropriate under the circumstance.
- [56] In this case, it appears that Dr. Prasad, who was called by the appellant (DW3) is being attacked and challenged by the appellant himself. However, the assessors and the learned trial Judge believed in Dr. Prasad's evidence.
- [57] The evidence given by Dr. Singh on his medical examination of the appellant were accepted by the assessors and the trial Judge.
- [58] There is nothing in the summing up or the judgment to suggest impropriety by any of the doctors. Counsel for appellant at trial, who acted on instructions of the appellant did not raise any issues to that effect. This Court has considered the conduct of the trial and evidence adduced; the summing up by the learned trial Judge and his judgement; the decision by the learned single Judge and the grounds of appeal urged by the appellant and the case for the respondent.
- [59] I agree with the responses to the grounds of appeal by the respondent as set out above. The learned trial Judge had considered and analysed the medical evidence adequately in the summing up and judgement and there is no reason to disturb the verdict; Nacagi v State [2015] FJCA 156; AAU 49.2010 (03 December 2015) which dealt with the importance of medical evidence to determine the voluntariness of confession and in what circumstances an appellate court should disturb the findings of a trial Judge. Sugu v State [2016] FJCA 69; AAU 44 of 2012; 27 May 2016 is also relevant as it followed Nacagi.
- [60] The grounds of appeal are dismissed. The appeal against conviction is dismissed. Conviction is affirmed.

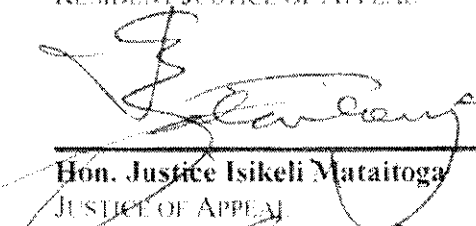
Order of Court:

1. *Appeal is dismissed.*
2. *Conviction affirmed.*





Hon. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL



Hon. Justice Isikeli Mataitoga
JUSTICE OF APPEAL



Hon. Justice Alipate Qetaki
JUSTICE OF APPEAL

SOLICITORS:

Appellant in Person

Office of the Public Prosecutions for the Respondent