

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 095 OF 2010S

THE STATE

v.

- 1. SALESI BALEKIVUYA**
- 2. SAIMONI TUKANA**

Counsels : Ms. N. Wickramasekera and Ms. M. Tikoisuva for the State
Mr. T. Muloilagi for Accused No. 1
Ms. B. Malimali for Accused No. 2

Hearings : 4th, 5th, 6th, 7th and 8th July, 2011

Ruling : 11th July, 2011

RULING ON TRIAL WITHIN A TRIAL

1. There are five counts in the information. The most serious count is the murder charge. Both accuseds were charged with murdering Krishneel Singh, at Shalimar Street, Samabula, on 4th May 2010. It was alleged that the two accuseds struck Mr. Singh's head with a spade and crowbar and repeatedly kicked him to death.
2. A police investigation was carried out. Both accuseds were caution interviewed by police. Both allegedly confessed to murdering Mr. Singh, on 4th May 2010. In this "trial within a trial", both accuseds are challenging the admissibility of their caution interview statements, on the grounds that they did not give their statements

voluntarily. They are alleging that the police repeatedly assaulted them, and forced the alleged confessions, out of them. They said, the interview statements were not given out of their own free will. They are also challenging the admissibility of their charge statements, on similar grounds. They are asking the court to declare their caution interview and charge statements, inadmissible evidence, and to strike the same out, from the trial proper.

3. The State, on the other hand, submitted otherwise. They said, both accuseds gave their caution interview and charge statements voluntarily. They said, the police did not assault, threaten or made promises to them before, during and after the caution interview and the formal charging. The State said, both accused gave their caution interview and charge statements out of their own free will, and no undue pressure or oppression was put on them.
4. The law in this area is well settled. On 13th July 1984, the Fiji Court of Appeal in **Ganga Ram & Shiu Charan v Reginam**, Criminal Appeal No. 46 of 1983, said the following, “...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 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 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 the will, by trickery or by unfair treatment. **Regina v. Sang** (1980) AC 402, 436 @ C – E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account...”
5. In this case, the prosecution called 16 witnesses – all police officers except 3, who were civilians. The 3 civilians were a Justice of Peace, a registered nurse and a doctor. For the defence, there were 5 witnesses. Accused No. 1 gave sworn

evidence himself, and called 3 witnesses. Accused No. 2 gave sworn evidence and called no witness. There were therefore a total of 21 witnesses.

6. This case was no different from most “trial within a trial” cases. The version of events between the prosecution and the defence were completely at odds with each other. The prosecution, through their witnesses said, the two accuseds were not assaulted, threatened or given promises before, during and after their caution interviews. The prosecution said, this was also the case when they were formally charged. In other words, what the prosecution was saying was that, both accuseds, when caution interviewed, gave their answers voluntarily and out of their own free will. That was also the case when they were formally charged.
7. The defence, on the other hand, presented a completely different picture. As for accused No. 1, he said, he was arrested by DC 3761 Jone, at Jittu Estate, on 4th May 2010, after 5.30pm. He said, he was drunk at the time. According to accused No. 1, DC Jone, DC 3657 Leone, and DC 3476 Sikulu assaulted him at the scene of arrest. He said, they repeatedly punched and kicked him. He said, they then dragged him to Shalimar Street, the crime scene. According to accused No. 1, he was further assaulted at the crime scene by D/Sergeant 2195 Samuela, DC Jone, DC Leone and DC Sikulu. He said, he was beaten with police batons. He fled the scene. He was pursued. PC 4625 Pauliasi, according to accused No. 1, caught him and repeatedly assaulted him thereafter. The other police officers then repeatedly assaulted him again. He said, he was later taken to Samabula Police Station.
8. Accused No. 1 said, on 5th May 2010, before he was caution interviewed, he was repeatedly assaulted by PC Pauliasi with a police baton. According to accused No. 1, PC Pauliasi punched him up, spat at him, and hit his back leg, hands and jaw with a police baton. He said, the police threatened him to “make the interview easy”. He said, they said if he doesn’t co-operate, they will assault him again. He said, the police repeatedly punched him, slapped him and repeatedly hit him with a police baton. He said, the police fabricated the whole interview and forced him to sign the interview notes. He said, he was not assaulted when taken to view the crime scene.

9. Accused No. 1 called two witnesses to confirm the police assaulted him in the Samabula Police Station cell. Both witnesses were serving prison time at Naboro Prison. Accused No. 1 also called a civilian to confirm the assault on him at the time of his arrest. The witness was a close neighbour of his, and resided in the same settlement.
10. As for accused No. 2, he said he surrendered to Nabua Police Station, on 9th May 2010, after hearing the police were after him. He said, he was later taken to Samabula Police Station, and locked in the cell. The next day, 10th May 2010, he was caution interviewed by police. He said, nothing happened to him. On 11th May 2010, he was again caution interviewed by police. He said, he was repeatedly assaulted by police for 45 minutes. They punched him and beat him with a stick. He said, he was slapped repeatedly and punched on the head and face. He said, he was punched on the jaw also. He said, he was stomped on the chest and stomach. He said, at the end of his interview, he was very weak. He said, he was forced to sign the interview notes. He said, his interview notes was nothing, but a fabrication by police.
11. The police officers who arrested, caution interviewed, formally charged and witnessed the above, all denied assaulting, threatening or making promises to both accuseds before, during and after his arrest, interview and formal charging. They denied both accuseds' allegations against them.
12. I have carefully listened to both prosecution's and defences' witnesses evidence. I have carefully considered and compared them. I have looked to the medical reports of both accuseds to find confirmation of the parties' different positions on the issue of whether or not both accuseds gave their statements to the police voluntarily. In my view, both accuseds described being seriously assaulted by the police, while they were in their custody. One would expect evidence of serious injuries on their bodies when they were medically examined. However, the medical reports, in my view, described nothing serious. The medical reports themselves challenged the credibility of both accuseds' evidence, because it did

not support what they were saying. If the accuseds' evidence are to be accepted, one would not expect a medical report, but a post-mortem report, to be submitted.

13. Given the above, I find the prosecution has proven beyond reasonable doubt that both accuseds gave their interview and charge statements voluntarily to the police, and I order the same as admissible evidence. Its acceptance or otherwise will be a matter for the assessors to decide.




Salesi Temo
JUDGE

Solicitors for the State : **Office of Director of Public Prosecution, Suva.**
Solicitors for Accused No. 1 : **Mr. T. Muloilangi, Barrister & Solicitor, Suva**
Solicitors for Accused No. 2 : **Pacific Chambers, Barristers & Solicitors, Suva**