

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 109 OF 2012

STATE

-v-

- 1. STEVEN PRASAD**
- 2. RAVINESH SINGH**
- 3. RONIL KUMAR**

Counsels: **Mr. S. Babitu for the State**
 Ms. Jiuta for the 1st Accused
 Mr. Anil J. Singh for the 2nd Accused
 3rd Accused in Person

Date of Hearing: **1st December 2014 – 4th December 2014**
Date of Ruling: **12th December 2014**

Voir Dire Ruling

1. The State seeks to adduce into evidence the record of the caution interviews of the three accused on 9.8.2012 and 10.8.2012 and charge statements of the three accused on 9.8.2012 and 10.8.2012. The three accused object to the admissibility of these documents on the grounds that these statements were obtained involuntarily through assaults, physical pressure, intimidation and threats by the police.
2. The test of admissibility of all confessional statements made to the Police officers is whether those were made freely and not as a result of threats, assaults or inducements made to the accused by person or persons in authority. Further, oppression or unfairness also leads to the exclusion of the confession. Finally, where the rights of the suspects under Section 27 of the previous Constitution have been breached, this will lead to the exclusion of the confessions obtained thereby unless the prosecution can show that the suspect was not thereby prejudiced.

3. The preamble of the Judges Rules states as follows:

“That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.”

4. The Privy Council, In the case of **Wong Kam-ming v The Queen** (1980) A.C. 247, P.C., observed that:

*“[t]he basic control over the admissibility of statements are found in the evidential rule that an admission must be voluntary i.e. not obtained through violence, fear or prejudice, oppression, threats and promises or other improper inducements. See decision of Lord Sumner in **Ibrahim v R** (1914-15) AER 874 at 877. It is to the evidence that the court must turn for an answer to the voluntariness of the confessions.”*

5. The Fiji Court of Appeal in case of the **Ganga Ram and Shiu Charan v R** (FCA Crim. App. 46/1983) outlined the two-part test for the exclusion of confessions at page 8:

“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 use of force, threats or prejudice or inducement by offer of some advantage-what has been picturesquely described as ‘flatter of hope or the tyranny of fear.’ **Ibrahim v R** (1914) A.C. 559; **DPP v Pin Lin** (1976) A.C.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 over bearing the will, by trickery or by unfair treatment. **Regina v Sanag** (1980) A.C. 402, 436CE). This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account.”*

6. It is for me to decide whether interviews were conducted freely and not as a result of threats, assaults or inducements made to each accused by a person or persons in authority. Secondly if I find that there has been oppression or unfairness, then I can in my discretion exclude the interview. Finally, if his rights under the Constitution or common law have been breached, then that will lead to exclusion of the confession

obtained thereby, unless the prosecution can show that the suspect was not thereby prejudiced. These rights include such rights as having a legal representative of his choice and having access to family, next-of-kin or religious counselor.

7. The burden of proving voluntariness, fairness, lack of oppression, compliance with common law rights, where applicable, and if there is non-compliance, lack of prejudice to the accused rests at all times with the prosecution. They must prove these matters beyond reasonable doubt. In this ruling, I have reminded myself of that. Further, I am reminded that I have to consider evidence in respect of each accused separately.
8. The defence objected to the admissibility of the caution interviews on the following grounds:
9. The voir-dire grounds of the 1st accused are:
 - (i) That he was arrested at Nadi town end by the strike back team and was taken somewhere in Nadi, which he doesn't know into a vacant house where he was assaulted to admit the allegation.
 - (ii) That at the vacant house he informed the officers he had no knowledge of the case and in fact he did not commit it, so then he was taken to Nadi police station.
 - (iii) That at Nadi police station he went through a process of ill, inhumane treatment, force and threat just to admit the case.
 - (iv) That though pain and fear he had no other option but to admit this case, as a first offender and new to the law he was scared and feared for his life that police might kill him, so he admit the offence.
 - (v) That he was in police custody for 4 days till he was taken to Court and at Court he complained to the Judge that he was assaulted at Nadi police station, which was ignored by the Judge and he was remanded.
 - (vi) That at the day he was brought to Natabua remand center he was asked if he had any complaint about the injuries he had he said 'no' as he was scared to go back to the station.
 - (vii) On his first day at remand center he made a complaint that he was assaulted by the strike back team of Nadi police station and prison officers took him to the hospital.
 - (viii) On 11.8.2012 he was medically checked and provided with a prescription.
 - (ix) During his arrest he was in good health and due to police assault at the station during his interview and charge resulted in the injuries mentioned in the report.
10. The 2nd accused's voir-dire grounds are:
 - (i) He was seriously assaulted by police officers before his interview by the following officers:
 - (1) Arresting officer Ilaitia.

- (2) Officer Shalen
- (3) Officer Wayne
- (4) Officer Maciu

- (ii) The learned Magistrate on Friday 10th August 2012 ordered that the he be medically examined, however police failed to have him medically examined.
 - (iii) The interview given by him was not voluntary as it was obtained by acts of violence as such not admissible in the trial.
11. The voir-dire grounds of the 3rd accused are:
- (i) On 6th August he was involved in a brawl he had sustained serious injuries. He had lodged a report at Lautoka police station on the 6th August and sought medical assistance. His face was stitched.
 - (ii) He was told that if he did not admit they will go and ruin his sister's wedding. They told that if he did not admit they will seize all of his sister's and family's gold and money. Out of fear that his family being victimized he had to give up to their demand and admit the allegation.
12. Now I look at the evidence presented in respect of the caution interview of each accused.
13. The first witness was Cpl. Henry Kean. He is an officer with 14 years of experience. On 8.8.2012 he was attached to the K9 unit based at Nadi International Airport. He had received a call from Nadi police station about a report of aggravated robbery. After readying and harnessing the K9 it had gone through the bushes and barbed wire for about 50m and found the 1st accused hiding in a bush frightened and shivering. The 1st accused had bruises on his legs, forehead and left side of the face. The 1st accused was handed over to Nadi police station. He had not made any complaint. He identified the 1st accused in Court.
14. Under cross examination by the counsel for the 1st accused, he stated that he did not know the 1st accused before. The dog lost track from the 1st scent and followed a scent from Qeleloa road. The 1st accused did not have a black eye on the left. At the time of arrest he had told the 1st accused to remain still. That is all he told him.
15. The second witness for the prosecution was DC Gupta. He is an officer with 8 years' experience. On 9.8.2012 he had received instruction to caution interview the 2nd accused. WDC Virisila was witnessing officer. It was in English language. The accused was not assaulted or threatened before, during or after the interview. He did not make a complaint. He did not see any injury on the 2nd accused before the interview. He identified and tendered the caution interview notes of the 2nd accused marked VD1. He identified the 2nd accused in Court.

16. Under cross examination by the counsel for the 2nd accused, he stated that he first saw the 2nd accused on 8.8.2012 when he was doing crime standby duties. He had not seen the 2nd accused on 10.8.2012. He denied that 2nd accused's face was heavily bruised when he saw him on 8th and 9th. He admitted that when a person is arrested and brought to the station, an entry will be made in the station diary. If the suspect had injuries, it will be recorded in the station diary and the cell book. He denied the 2nd accused having injuries on his face. He denied that the 2nd accused was assaulted while he was blinded by his singlet. He denied threatening the 2nd accused during the interview. He denied obtaining 2nd accused cooperation by threatening him. He denied that he and other officers assaulted the 2nd accused during the interview.
17. The third witness for the prosecution was WDC Virisila. She is the witnessing officer of the interview of the 2nd accused. The 2nd accused did not make any complaint before, during or after the interview. He was not assaulted or threatened during the interview. He gave answers voluntarily. She had charged the 2nd accused on 10.8.2012. The 2nd accused did not make any complaint. She did not threaten or assault the 2nd accused before or during the charge. The 2nd accused was not forced or assaulted to make the statement. The 2nd accused made a statement voluntarily. She identified and tendered the charge statement marked VD2.
18. Under cross examination by the counsel for the 2nd accused, she said that she was unaware that the Magistrate had ordered the 2nd accused to be taken to hospital. She denied that 2nd accused had significant face injuries on 9.8.2012. His eyes were not bruised or lips were not swollen. She had not seen officer Salend assaulting the 2nd accused. She denied that interviewing officer threatened the 2nd accused. She denied that the 2nd accused was seriously assaulted before the interview.
19. Under cross examination by the 3rd accused, she denied taking his photograph after the charge.
20. The fourth witness for the prosecution was PC John Rao. He was on mobile petrol on 10.8.2012. He was the driver of the police vehicle which went to arrest the 3rd accused. Firstly they have gone to his house at Saru. When they have parked the vehicle near a store, the 3rd accused too had come and parked his vehicle at the same place. The 3rd accused was arrested there. He was not assaulted during the arrest. He was taken to the Lautoka police station. He was not assaulted on the way.
21. Under cross examination by the 3rd accused, he stated that he went with Cpl. Penia, SC Kelevi and PC Senitiki. SC Kelevi had arrested the 3rd accused. It was after 10 in the night. There was a wedding ceremony at his house in Saru. He had not put notes as he was driving that day. But all other officers have put notes.
22. The fifth witness for the prosecution was DC Kelevi Sewatu. On 10.8.2012 they were looking for a suspect named Ronil Kumar. He was found at Ram Asre road outside New Star supermarket. He was not assaulted or threatened. He had injuries, a black eye

and a bandage over forehead. He did not make any complaint. He was taken to Lautoka police station. He was not assaulted on the way.

23. Under cross examination by the 3rd accused he stated that 3rd accused was cautioned after the arrest. He denied promising the 3rd accused if he admits the offence they will not ruin the wedding of his sister or will not search his house.
24. The sixth witness for the prosecution was DC Timoci Tavurunaqiwa. On 9.8.2012 he had caution interviewed the 1st accused. PC Vishal was the witnessing officer. The 1st accused did not make any complaint before, during or after the interview. No assaults or threats were made before the interview. The 1st accused had some bruises and he was limping. He was not assaulted or threatened during the interview. The 1st accused gave answers voluntarily. He identified and tendered the original caution interview notes marked VD3 and identified the 1st accused in Court.
25. Under cross examination by the counsel for the 1st accused, he stated that 1st accused was taken to the hospital before the interview. He denied that DC Sairusi and two other officers were present during the interview. He admitted that the fact the 1st accused received injuries while trying to escape arrest was not recorded in the interview. He denied that the 1st accused was blacked out and just lying in the crime office before the interview. He denied that the 1st accused was assaulted before the interview. He admitted that if the 1st accused had injuries, it should be recorded in station diary and cell book. He had not seen swollen left eye but had seen bruises on the face. The 1st accused had not made a complaint before the interview that he was assaulted by police.
26. Under cross examination by the counsel for the 2nd accused, he admitted that the 2nd accused was brought to the crime office on 8.8.2012. He denied he had number of injuries on his cheek and lips when he was brought. He admitted that 2nd accused was interrogated at the crime office. He denied hitting the 2nd accused on head and ribs. He denied that 2nd accused had visible injuries on 8th, 9th and 10th August 2012.
27. Under cross examination by the 3rd accused, he stated that he saw the 3rd accused for the first time when he was handed over to record the charge statement on 11.8.2012.
28. The seventh witness for the prosecution was DC 3260 Vishal Kumar. On 9.8.2012 he had received instruction to be the witnessing officer of the caution interview of the 1st accused. The 1st accused did not make a complaint before the interview. He was not assaulted or threatened before the interview. He had some injuries. His face was swollen and he was limping. During the interview the 1st accused was not assaulted, threatened or forced to give answers. The 1st accused did not make any complaint at the conclusion. He identified VD 3 and the 1st accused in Court.
29. Under cross examination by the counsel for the 1st accused, he stated that he was present throughout the interview. He denied that more than 5 officers were present.

- He denied 1st accused making a complaint that he was assaulted before the interview by the police officers. He denied verbally threatening the 1st accused during the interview. He denied that the 1st accused was lying in the crime office blacked out.
30. Under cross examination by the counsel for the 2nd accused, he denied that he threatened the 2nd accused with a hammer.
 31. The eighth witness for the prosecution was DC 3858 Saiasi Matarugu. On 9.8.2012 he had charged the 1st accused. He had observed the injuries on the 1st accused. The 1st accused made a statement during the charge. He was not assaulted or threatened to make a statement. He made that statement voluntarily. He identified and tendered the charge statement marked VD4. He identified the 1st accused in Court.
 32. Under cross examination by the counsel for the 1st accused, he denied that more than two officers were present during the charge. He denied that the 1st accused complained to him that he was assaulted during the arrest by police officers. He denied threatening to punch the face of the 1st accused if he does not apologize.
 33. Under cross examination by the counsel of the 2nd accused, he denied being present at the time of arrest of the 2nd accused.
 34. Under cross examination by the 3rd accused, witness admitted that he caution interviewed the 3rd accused for another case on 10.8.2012. He denied taking the 3rd accused for reconstruction of crime scene in this case or taking photographs of the crime scene. He also denied threatening the 3rd accused and making a promise to him before the caution interview of this case.
 35. The ninth witness for the prosecution was Inspector Maciu Vava. He is an officer with 26 years' experience. He stated that 2nd accused was arrested by DC Ilaitia in Korociri on 8.8.2012. The 2nd accused was not injured. The 1st accused was arrested at Qeleloa. He had injuries at the time of arrest. The 3rd accused was arrested few days later in Lautoka. He did not receive any complaint from the 1st accused or 3rd accused that they were assaulted or threatened. He tendered the cell book of the Nadi police station and drew attention to the injuries recorded there of each accused.
 36. Under cross examination by the counsel for the 1st accused, he admitted that other officers were present when the 1st accused was arrested by Cpl. Kean. He denied that they were beating the 1st accused on face, chest and legs. He admitted that 1st accused had to be carried to the vehicle at the time 1st accused was handed over to him. But 1st accused was walking. The 1st accused did not make any complaint to him.
 37. Under cross examination by the counsel for the 2nd accused, he stated that he did not make the entries in the cell book. But he had a look at those entries. He denied it is ML and not Nil injuries. He denied that the 2nd accused had major laceration in cheek and

inner cheek. The station diary for the relevant period cannot be located. He denied taking the wallet of the 2nd accused or giving him a slight knock.

38. Under cross examination by the 3rd accused he admitted that he went to Lautoka on 10.8.2012 to pick the 3rd accused. He denied blind folding the 3rd accused and threatening and assaulting him. When the 3rd accused was handed over, there were some injuries. He denied promising the 3rd accused if he admits the allegations they will not search his house.
39. The eleventh witness for the prosecution was DC Jolame. He had caution interviewed the 3rd accused on 10.8.2012. Sgt. Amol was the witnessing officer. The 3rd accused did not make any complaint before the interview. He was not assaulted or threatened. During the interview, 3rd accused was not assaulted or threatened to give the answers. The answers were given voluntarily. He identified and tendered carbon copy of the interview marked VD 6. He identified the 3rd accused in Court.
40. Under cross examination by the 3rd accused, he stated that witnessing officer was given opportunity to sign the interview. But he did not sign. The witnessing officer was present throughout the interview. The 3rd accused was fit for the interview. He was interviewed before, same day. No reconstruction was done. He denied promising the 3rd accused if he admits he will be released. He denied taking photographs of the scene.
41. The last witness for the prosecution was former Sergeant Amol Prasad. He was the witnessing officer of the caution interview of the 3rd accused. The 3rd accused had injuries before the interview. During the interview, the 3rd accused was not assaulted, threatened or forced to give answers. The 3rd accused gave answers voluntarily. He did not make any complaint after the interview. He identified VD6 and the 3rd accused in Court.
42. Under cross examination by the counsel for the 1st accused, he denied being part of the team that arrested the 1st accused
43. Under cross examination by the 3rd accused, he stated that he signed the interview notes. He admitted that his signature is not there in the carbon copy. He stated that he signed the original. But he said that VD6 is carbon copy of the original.
44. After the close of the prosecution case, I found a case to answer from each accused in the trial within a trial and explained each accused his rights.
45. The first accused stated that he was arrested in an early morning in 2012. He had come out of his girlfriend's house from back door and was on a gravel road. He saw three people running past him. When he turned left, 5-6 police officers came and threw a baton at him. It hit his left eye. His left eye was bleeding. He was taken to another compound. He was thrown on barbed wire and they started hitting him. Barbed wire

was scattered on ground in that compound. He was hit with hands and fist and kicked with gum boots. He was blacked out. When he was sitting in a chair in Nadi police station, water was thrown at him. Then he regained consciousness. He saw the 2nd accused being beaten up by police officers. Again he was beaten. He was questioned and some part was written. He complained to the officers. They made him to sign some papers. He was taken to somewhere in the night. It looked like a hospital to him. He signed a paper. A nurse there told him to get into a wheel chair as he could not stand properly. He identified his signature in medical report which was tendered marked 1D1. Doctor did not ask him any questions. When he was taken to Natabua, he was taken to a doctor. He complained to the doctor. He was sent for X-ray. He tendered a photocopy of examination form marked 1D MFI 1.

46. Under cross examination by the counsel of the 2nd accused, he stated that he saw that officers were slapping on face and beating the 2nd accused on the back with inner wrist. He saw injuries on the 2nd accused when they were taken to Court. He recalled that Magistrate told police to take 2nd accused to the hospital. They were taken back to station and then to Natabua.
47. Under cross examination by the 3rd accused he stated that he saw the 3rd accused first on 2nd day coming with police officers. Police officers were beating him and he had a plaster and bandage since like old injuries.
48. Under cross examination by the state, he denied receiving injuries while trying to run away from police. He saw one officer with a dog at the time of arrest. He is not sure whether that officer beat him. He was beaten on ribs, chin, back of his shoulders and neck with fist. Back of the head was swollen due to that. Ribs were painful and he could not breathe properly. He was also punched below the eye and on neck. He was kicked on the back bone. He shit in the pants due to kicks. A lot of blood was coming from his eye brow and gums. Blood stains were on his clothes. He denied that none of this happened. When he was in police station, he was beaten every ½ hour. He was punched on chest, back and chin. He was in severe pain and he could not recall. He was also kicked on backbone plenty times. When suggested if you were beaten like that, you should have serious injuries, he said that he had a black eye and eye was closed for 7 months. Till now when he coughs, blood is coming out from his nose. His ribs are still paining. He saw 2nd accused's face was swollen and lips. He did not see any cut or blood on him. He denied he was lying about that.
49. The 1st accused's case was closed subject to proof of 1D MFI 1.
50. The second accused also gave evidence. He stated that he was arrested in Korociri, Nadi on 8.8.2012. He was standing outside a vehicle. Police officer came in van and started slapping him on face and punched on his stomach. He was asked who were in the car and where they are. He told that they went towards the bush. Then police officer started hitting him. He had told that he did not know who they are. Second time he was hit on the head, face and cheek had a cut. When he spoke, blood was coming

out. The police officer was Ilaitia. Five other officers came there. They started shouting at him. Maciu hit on his head slowly and shook him by shoulders. He was taken to a van and hit on the ribs with fist. He was again asked who they were and replied I don't know. Then Ilaitia punched him on his stomach. When he bent forward, another officer hit him on the back. Then he was taken to Nadi police station.

51. It was 4-5 in the morning. He was dragged and made to sit on a bench in reception area. The officers came and asked him what happened. They punched him on his backside, left side ribs and lips. He had a cut on his lip. At the time of arrest received a cut in his cheek and blood was coming out. He received another cut on cheek in the station. He had pain in back side, stomach and cheek. He was made to sit for one hour. Police officers came one by one and asked him what happened. He told them he took one job in Korociri. The people in the car ran away. He was brought to the station after hitting. Ilaitia hit him and he fell down on the bench. The 1st accused was brought in with injuries. Ilaitia asked him whether he is a one of them. When he was quite, he was told that he will be made naked and chilies will be put to his private parts. He was scared. When he said this is not the boy, they started hitting him again on stomach and ribs. His shirt was taken out.
52. His vest was taken out and put around his head. He was hit while one held him from back. He was hit near ear and stomach. He was made to bend down and kicked from the back. Then he was taken to another building where they make reports. He was made to sit and 3 - 4 Indian officers talked to him in Hindi. When he asked for water he was forced to drink whole bottle of water. After that, many officers started asking questions at the same time. If he delayed one answer, he was knocked on the head. He was told that he will be hit the same way 1st accused was hit. He was scared and told if you tell what to do he will do it but don't hit him.
53. He told that car belong to his sister. He was told to admit and if not sister will be called and she will be charged and hit. Then one Indian officer started asking questions. In his office there was a glass cabinet. He took out a hammer from the cabinet and knocked on the table saying he will break 2nd accused's fingers. He grabbed his neck and starting shaking.
54. Then he was taken to his house in a van. His wife and sister-in-law were there. They searched the house and scattered all the things. They took some liquor bottles saying those are stolen. They also took a Silver 'Om' sign from the prayer place. Gupta was threatening him that if he will not admit they will bring the sister. He said whatever you want, you do it. He was told he has to sign the report prepared by them. They talked with him and took ½ statement. Then his sister came. He wanted to talk to her. It was not allowed. After sometime they gave permission to meet her. He complained to the sister then they took him and locked in the cell.
55. Next day in the morning a statement was taken by Salend who hit him. Salend told him to sign by force. Then Gupta was writing a report while 6 - 7 officers were questioning

him. He was hit and punched from the back. He was told to sign without reading as they are getting late to go to Court. But that day he was not taken to Court. Around 7.00 p.m, another boy with injuries was brought that day. He was told that is another suspect. He had visitors that day. His wife, sister and brother-in-law came. He had a deep cut on lip when Salend hit him. He had another cut on cheek. He had a slight injury on nose. When he sneezed blood came out. He had pain in ribs and bump. He could not bend.

56. Following day he was taken to Court after he took a bath. His parents, wife and sister were in Court with a lawyer. He told the Magistrate that he was hit and he has injuries. Police were told to take him to a doctor. But he was not taken to a doctor. He was taken to Natabua. Next day he complained to prison officers. He was taken to a doctor and some medicine was given. He was scared when Gupta was taking his statement. He was scared that they will hit him again and call his sister and charge her.
57. Under cross examination by the state, he stated on the first day he had a cut inside the cheek and cheek was swollen. There was slight cut on lip and left side back of the ear area swollen. At the interview a lady officer was present. She was not present during any assault. He denied that he was not assaulted or threatened during the interview. He was punched on chest several times by 3-4 officers taking turns. As he is a heart patient something could have happened. He was admitted to hospital 2-3 months before. Those punches were painful. Gupta did not assault him but was threatening him. Virisila did not assault or threaten him at any time. As he was assaulted earlier, he was frightened. Whatever Virisila asked he admitted without threat from her. He did not tell the words in the charge statement.
58. During the interview he did not answer Gupta's questions. He knew Gupta before and he is a distant cousin. Gupta was straight forward and doing his job. He does not remember Gupta asking questions from him. Then he said Gupta asked questions and he answered some questions. Some answers he was forced to give and some without force. Some answers were voluntary and some are not. He was seen by the medical orderly in remand. After getting bail he went to hospital. He was only given pain killers and send back home without x-ray. There is no report from the doctor. His wife took him to the hospital.
59. The second accused called his sister to give evidence. On 8.8.2012 while at work she received a call that 2nd accused was arrested. She went to Nadi police station around 6.00 p.m. She had met officer in charge Salend Naidu. She requested to see the 2nd accused. After several attempts she was allowed to see him from a distance. Second accused had cuts on his lips. His face was swollen. He was beaten badly. She was not allowed to talk to him. But she asked are you okay. He nodded the head. She asked him whether officers hit him. Then she was asked to leave. She told officer Salend that her brother will fully cooperate and don't hit him, raise a hand or do anything. She took officer Salend's mobile number. Same night she called Salend and she was told investigations are continuing and to call next day.

60. Next day she had gone to the station with her parents, brother, sister-in-law and aunt around 7.30-8.00 a.m. She was not allowed to see the 2nd accused. She called Salend during the day. She was told 2nd accused made a statement and will be taken to court same day. She specifically told him to wait for their lawyer to read everything before 2nd accused signs. Then 1/2 hour later she called and found out 2nd accused had signed without presence of their lawyer. She was told that it was explained to the 2nd accused. She had gone to see the 2nd accused after 7.00 p.m with sister-in-law. She was not allowed to see him and was told investigation was going on. She was sitting in Salend's room. She heard people screaming and someone being slapped. Then 2nd accused walked in. He was limping. He could not walk. There were more bruises on his face. Both sides of his lips were cut. She asked him whether he was beaten. He said yes. She had told 'brother was fully cooperating why you assault him'. Salend had said that he was not on duty. Then she was asked to leave.
61. On 10th she had gone with family members to Court. She had seen the 2nd accused outside Court room. He was limping and could not walk properly. One side of his face was really swollen. Lips had cut marks. She requested her lawyer to ask for medical examination. Magistrate said medical to be done to the 2nd accused. The 2nd accused was taken to Natabua. She had gone to Nadi police station and asked officer Maciu about medical examination. She was told that it has to be done by Natabua officers. Second accused had no injuries on 7th night. She was not at home when police came.
62. Under cross examination by the state she stated that she did not see any police officer assaulting or threatening 2nd accused. When 2nd accused was bailed he was not taken to the hospital. On 8th he had a cut on lips and his lips were swollen. On 9th both sides of lips were cut and his face was swollen. He was limping while walking. She admitted that she is in Court to save her brother.
63. The next witness for the 2nd accused was his wife. On 8.8.2012 she received a call and as a result went to Nadi police station. She saw 2nd accused sitting in a chair in the reception area. She requested to speak to him but refused. He had a cut on lips and face had bruises. On 9th she had gone to station after 7.00 p.m. with earlier witness. While they were sitting in Salend's room, police officers were surrounding the 2nd accused, shouting and banging the table. She saw this before entering room. They were asked to wait till the interview is finished. When 2nd accused came he had another cut on his lip. His lips were swollen. One side of the face was also swollen. He was limping a bit. He told that officers hit him. Salend was there. Sister-in-law told Salend not to hit him and he will cooperate. Then they went out.
64. On 10th she had gone to Nadi police station and had seen the 2nd accused. He had some injuries. He was taken to Court. A request was made for medical examination. Magistrate told officers to take 2nd accused for medical checkup. He was taken to Nadi Police Station and then to Natabua.

65. Under cross examination by the state she stated that she did not see any police officer assaulting or threatening the 2nd accused. When 2nd accused was granted bail he went to hospital. Only pain killers were given. There is no medical report.
66. The third accused also gave evidence. He stated that he was arrested by Lautoka strike back team on 9/8 at 7.30 p.m. He was told that he is wanted for a robbery case in Malolo, Nadi. He was interrogated. He said he know nothing about that. He was brought down to Lautoka police station. He had injuries received beforehand. Inspector Maciu from Nadi Police Station came to take him. As he got into van he was blind folded and assaulted till Maciu told them to stop. They were interrogating him. He was told if he admits they will not ruin the wedding of his sister and his house will not be searched.
67. When he was taken to Nadi police station he was further subjected to yelling and verbal abuse. He was given Panadol when he complained that he is not feeling well. He was made to lie on a desk. The following morning he was taken to crime office. He could see the other suspects being interviewed. He was kept separately from them. At once he was asked about so many cases. Firstly he was asked about robbery in Malolo, Nadi. After few questions another officer asked another set of questions. Out of fear he signed the interview statements. He made no statements regarding allegations. Then he was locked in the cell and interview resumed in the afternoon. He was made to sign the interview notes. Interviewing officer Jokini had said that all answers were copied from other accused's statements. He had complained to station officer that he wants to go to hospital. He was told to wait for directive from crime officer.
68. On 11/8 he was further interviewed on another matter. Same day at 3.00 p.m. he was handed over to Namaka officers. On Sunday he was taken to the hospital and on Monday he was taken to Court.
69. Under cross examination he admitted that he was injured before he was taken to custody. During his arrest, he was threatened and body punches were given by Officer Kelevi on side of the stomach. He had gone to shop to buy cigarettes. He was not assaulted or threatened at Lautoka police station. In the van, Opeti and Filise assaulted him. These were slightly soft punches. He was not assaulted during the interview. He was forced to sign. He gave answers only up to question 15. Those were given voluntarily.
70. He further stated in re-examination that he was not fit for the interview. He made several complaints to the officers that he wants to go to hospital but it was declined. He was threatened, remember that wedding is going on and we want to search the house. He had signed out of fear that his family will be victimized.

Analysis of the evidence

The 1st accused

71. The 1st accused alleges that he was arrested at Nadi town end by the strike back team and was taken somewhere in Nadi, which he doesn't know into a vacant house where he was assaulted to admit the allegation in voir-dire grounds.
72. Giving evidence he stated that he was arrested when he came out of his girlfriend's house. Officers came and threw a baton at him. It hit his left eye. His left eye was bleeding. He was taken to another compound. He was thrown on barbed wire and they started hitting him. Barbed wire was scattered on the ground in that compound.
73. When arresting officer gave evidence he stated that 1st accused was arrested in Qeleloa hiding in a bush. He had injuries on forehead and left side of the face. There were bruises on both legs. These injuries were caused from barbed wire, gravel and drain he went through while tracking him using a K9. These injuries are noted in the cell book when the 1st accused was locked in the cell. The injuries are bruises in left side eye, swollen left eye, scratch marks on both legs. These were firstly recorded on 8.8.2012 at 2100 hours.
74. According to Medical report 1D1 tendered on behalf of the 1st accused had superficial lacerations when he was examined on 9.8.2012 at 8.20 a.m.
75. The above positions that were taken up the by the 1st accused was never put to the arresting officer. Therefore the positions taken up by the 1st accused are inconsistent. Further, if the 1st accused was thrown on barbed wire scattered on the ground there could have been injuries all over his body. For all these reasons, I am unable to accept the defence version when I apply the tests of consistency, probability and belatedness.
76. The first accused was asked 86 questions in the caution interview. He had given answers to those questions.
77. Having heard the evidence by prosecution and the defence, I accept the evidence of the police officers that caution interview statement and charge statement of the 1st accused was recorded fairly, without any assault or threat. I have considered the demeanor of all the witnesses who testified before me in respect of the 1st accused. Therefore caution interview statement and charge statement of the 1st accused on 9.8.2012 are admissible in evidence.

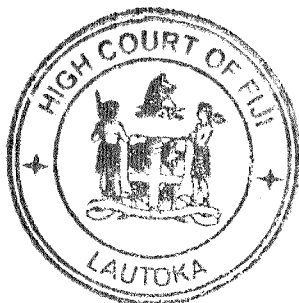
2nd Accused

78. The position of the 2nd accused in voir-dire grounds is that he was seriously assaulted before the interview by Officers Ilaitia, Salend, Wayne and Maciu.

79. The position he took in his evidence was that he was assaulted from the time of arrest till conclusion of the interview several times. He had injuries in the cheek inside and on lips. That was confirmed by his sister and wife who gave evidence on behalf of him. The lawyer who appeared for him had made an application for medical examination by a doctor on 10.8.2012. However, he was not taken to a doctor.
80. The position of the prosecution was that 2nd accused had no injuries while he was in police custody. They submitted the cell book entry to confirm that. The defence challenged this cell book entry on the basis that what is recorded is 'ML' and not 'Nil'. There are three entries about the 2nd accused in cell book. The first entry on 8.8.2012 at 2200 hours appears as 'ML' claimed by the defence. The next entry was 10.8.2012 at 0035 hours is 'Nil'. The third entry on 10.8.2012 at 1255 hours is also 'Nil'.
81. The sister and wife of the 2nd accused were allowed to see him while he was in police custody. Officer Salend had given his mobile number to the sister of the 2nd accused. If the accused was assaulted as claimed by him and was with injuries as claimed by the defence, will the officer Salend give permission for them to see the 2nd accused and talk to him. The learned Magistrate had not noted any visible injuries on the 2nd accused. If there were significant injuries on the face of the 2nd accused and he was limping as claimed by the defence, the learned Magistrate should have noticed the same. The 2nd accused was represented by the same counsel on that day. There is no submission by him to the learned Magistrate about these significant facial injuries. The defence had not taken any steps to report the matter to senior police officers to take any further action.
82. The 2nd accused admits that he was taken to a doctor while in remand. If so, the doctor could have noted down the injuries. The position in the voir-dire grounds is that he was never taken to a doctor. Therefore, prosecution is unaware of this examination by a prison doctor.
83. The 2nd accused admits that he was not assaulted in the presence of Officer Virisila. This officer was the witnessing officer of the 2nd accused's caution interview
84. Considering all above, I am unable to accept the defence version when I apply the tests of consistency, probability and belatedness.
85. Seventy four questions were asked from the 2nd accused in his caution interview. He had given answers to those questions.
86. Having heard the evidence by prosecution and the defence, I accept the evidence of the police officers that caution interview statement and charge statement of the 1st accused was recorded fairly, without any assault or threat. I have considered the demeanor of all the witnesses who testified before me in respect of the 2nd accused. Therefore, caution interview statement and charge statement of the 2nd accused on 9.8.2012 are admissible in evidence.

3rd Accused

87. The position of the third accused was that he was assaulted by the police officers after the arrest. He admits that he had injuries from a previous incident before the arrest. His position was that he was promised that the police officers will not ruin the ongoing wedding of his younger sister and will not search his house if he admitted the allegations. Out of fear that his family being victimized he had to give up to their demand and admit the allegation.
88. Giving evidence he stated out of fear he signed the interview statements. He made no statements regarding allegations. He was made to sign the interview notes. Interviewing officer Jokini had said that all answers were copied from other accused's statements. He was not assaulted during the interview. He was forced to sign. He gave answers only up to question 15. Those were given voluntarily.
89. It is clear from above that the third accused's version is not consistent. His main ground was that he was promised that his younger sister's wedding will not be ruined if he admits the allegations. But he also stated that he was forced to sign partly fabricated statement.
90. Considering above, I am unable to accept the defence version when I apply the tests of consistency, probability and belatedness.
91. Eighty five questions were asked from the 3rd accused in his caution interview. He had given answers to those questions.
92. Having heard the evidence by prosecution and the defence, I accept the evidence of the police officers that caution interview statement of the 3rd accused was recorded fairly, without any promise, assault or threat. I have considered the demeanor of all the witnesses who testified before me in respect of the 3rd accused. Therefore, caution interview statement of the 3rd accused on 10.8.2012 is admissible in evidence.




Sudharshana De Silva
JUDGE

At Lautoka
12th December 2014

Solicitors: **Legal Aid Commission for the 1st Accused**
 Anil J Singh Lawyers for the 2nd Accused
 Office of the Director of Public Prosecutions for the Prosecution