

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 281 OF 2013S

STATE

vs

- 1. PAULA VURA**
- 2. VERETI ISIMELI VANANALAGI**
- 4. ENERIKO SERU**

Counsels : **Mr. T. Qalinauci for State**
Ms. N. Mishra for Accused No. 1
Ms. E. Leweni for Accused No. 2
Ms. M. Tarai for Accused No. 4

Hearings : **5 and 6 October, 2015**

Ruling : **7 October, 2015**

RULING ON A “TRIAL WITHIN A TRIAL”

1. The abovementioned accuseds are presently charged with “aggravated burglary”, contrary to section 313(1) of the Crimes Decree 2009 (first count), and “theft”, contrary to section 291(1) of the same Decree (second count). It was alleged that they, on 19 July 2013, at Namadi Heights in the Central Division, broke into the dwelling house of the complainants, and stole properties worth approximately \$14,985, belonging to the complainants.
2. During the police investigation, all three accuseds were cautioned interviewed by the police. The first to be caution interviewed was Mr. Paula Vura, the first accused. He was interviewed by DC

3476 Mr. Sukulu Colati, on 20 and 21 July 2013, at Samabula Police Station. The interview was done in questions and answers in the English language and it contained 102 questions and 102 answers. It was tendered as Prosecution Exhibit No. 1. In the caution interview, Mr. Paula Vura admitted elements of the two charges contained in the information.

3. As for Accused No. 2, Mr. Vereti Isimeli Vananalagi, he was caution interviewed by DC 4630 Mr. Manasa Bainimarama. The interview was conducted in the English language, in question and answer form. It was first hand-written by DC 4630, and later typed by someone else. In fact, Accused No. 2 was caution interviewed twice, first on 21 July 2013, and second on 22 July 2013. The 21 July 2013 interview contained 75 questions and answers. The same was tendered as Prosecution Exhibit No. 2(A) – hand written version, and 2(B) – the typed version. The 22 July 2013 interview notes contained 10 questions and answers. They were tendered as Prosecution Exhibit No. 3(A) – hand written version, and 3(B) – typed version.
4. The allegation against Accused No. 2 was put to him in the first 21 July 2013 interview. The dates of the allegations were two. In the typed interview notes, the date of the allegation was 1 July 2013, while in the handwritten version, it was 18 July 2013, both different from the date of the allegation in the information, which is 19 July 2013. In the 22 July 2013 interview, the allegations put were linked to the allegation put in the 21 July 2013. It was said Accused No. 2 made no confession in the 21 July 2013 interview, but confessed in the 22 July 2013 interview.
5. As for Accused No. 4, Mr. Eneriko Seru, he was caution interviewed by DC 4096 Maciu Vakaruru at Samabula Police Station on 27 and 28 September 2013. 84 questions were asked in the English language and 84 answers were given. The interview notes were tendered as Prosecution Exhibit No. 4. The allegation put to Accused No. 4 were somewhat different from the allegation in count no. 1 and 2 of the information. DC 4096 put an allegation of aggravated robbery on 23 July 2013, instead of an aggravated burglary and theft on 19 July 2013 to Accused No. 4. It was said that Accused No. 4 admitted the aggravated robbery on 23 July 2013 to DC 4096.
6. In this “trial within a trial”, all three accuseds are challenging the admissibility of their caution interview statements to the police. Accused No. 2 and 4 were present in court during the “trial within a trial” to challenge the admissibility of their police caution interview statements. They were

also represented by their counsels. As for Accused No. 1, Mr. Paula Vura, he had been “on the run from the court” since 30 April 2015. He had attended court since first call on 2 August 2013, and was aware of the court proceeding and the trial dates. In the presence of his counsel on 9 May 2014, he was told of the trial dates from 5 to 16 October 2015. His counsel, Ms. N. Mishra had attended to his trial from 5 October 2015 to today, without his instructions. It would appear through his actions, he had chosen not to attend his trials. Pursuant to section 14(2)(h)(i) of the 2013 Constitution, the prosecution applied on 1 October 2015 for Accused No. 1 to be tried in absentia. The court granted the application. The “trial within a trial” against Accused No. 1 proceeded in his absence, with his counsel attending. By absenting himself from the trial, the court had taken it that Mr. Paula Vura, by his actions, had chosen to exercise his right to remain silent.

7. 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 (1941) 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...”
8. I have carefully considered the evidence of all the prosecutions’ and defences’ witnesses. I have compared and analyzed them. As for Accused No. 1, Mr. Paula Vura, DC 3476 Sukulu Colati (PW3) said, he caution interviewed Accused No. 1 at Samabula Police Station on 20 and 21 July 2013 – approximately 1 to 2 days after the alleged burglary and theft. 102 questions were asked in English and Accused No. 1 gave 102 answers. Accused No. 1 reached Form 6 level education. According to PW3, his right to counsel and other rights were given to Accused No. 1. PW3 said, he was formally cautioned, and was given his meal and rest breaks. PW3 said, he and other police officers did not assault, threaten or made promises to him, while he was in their custody. PW3 said, Accused No. 1 gave his caution interview statements voluntarily and out of his own free will.

PW3 said, he was also treated well while in police custody. The accused chose to remain silent by not attending the "trial within a trial". On the basis of the whole evidence, I find that Mr. Paula Vura gave his police caution interview statements voluntarily and out of his own free will. I find, on the evidence, that the police did not act unfairly towards him, while he was in their custody. I therefore rule that Accused No. 1's police caution interview statements dated 20 and 21 July 2013 are declared as admissible evidence, and its weight and credibility is a matter for the assessors to decide.

9. As for Accused No. 2, Mr. Vereti Vananalagi, he said he was arrested by police on 21 July 2013. He said the police took him from Fletcher Road to Colo-i-Suva and later to Samabula Police Station. He said he was repeatedly assaulted by police while he was in their custody. He said, they repeatedly punched him, kicked him and put chillies on his penis and anus. He was severely injured, and as a result he confessed to the police. He said, on first appearance in the Suva Magistrate Court on 23 July 2013, he asked for a medical examination at CWM Hospital, and the Resident Magistrate allowed his request. But as of today, the police never took him to CWM Hospital for a medical examination and no medical report is before the court. The police denied the accused's allegation of assaults, threats, etc. They said, he was not assaulted while he was in their custody. Furthermore, Accused No. 2's counsel submitted the dates on the allegation put to the Accused during the interview were different. The typed version named the date of the allegation as 1 July 2013. The hand written version named the date as 18 July 2013. The information named the date of the allegation as 19 July 2013.
10. Counsel for Accused said this behaviour was unfair to the accused, and the alleged confession must be ruled as inadmissible evidence. I agree with the defence. In my view, the fact that the police refused to take Accused No. 2 to CWM Hospital to be medically examined; when the Magistrate Court had ordered the same, does create a doubt in the prosecution's case. I have a reasonable doubt on whether or not Accused No. 2 gave his caution interview statements voluntarily, and the benefit of that doubt must go to Accused No. 2. Furthermore, it is unfair to admit the caution interview statements because the date of the allegations in the caution interview statements and information are different, and thus confusing. Because of the above, I declare Accused No. 2's police caution interview statements as inadmissible evidence.

11. As for Accused No. 4, Mr. Eneriko Seru, he was caution interviewed by DC 4096 Maciu Vakaruru at Samabula Police Station on 27 and 28 September 2013. He was asked a total of 84 questions and he gave 84 answers. The caution interview statements were tendered as Prosecution Exhibit No. 4. In this interview, DC 4096 interviewed the accused on an alleged aggravated robbery that occurred on 23 July 2013. The information referred to an allegation of aggravated burglary (1st count) and theft (2nd count) on 19 July 2013. So, if there was any alleged confession by Accused No. 4 to a charge unrelated to the information itself, that alleged confession would be irrelevant to this proceeding. It is fundamental that police officers must question suspects on the crime they are investigating, and they must get their dates right. Given the above, I declare Accused No. 4's alleged confession in Prosecution Exhibit No. 4 to be inadmissible evidence.
12. In summary, I rule Accused No. 1's police caution interview statements (Prosecution Exhibit No. 1) to be admissible evidence, and its weight and credibility are matters for the assessors to decide. As for Accused No. 2 and 4, I rule that their police caution interview statements (Prosecution Exhibit No. 2(A), 2(B), 3(A), 3(B) and 4) are inadmissible evidence. I rule so accordingly.



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JUDGE

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| Solicitor for State | : | Office of the Director of Public Prosecution, Suva. |
| Solicitor for Accused No. 1 | : | Office of Legal Aid Commission, Suva. |
| Solicitor for Accused No. 2 | : | TL Lawyers, Barrister and Solicitors, Suva. |
| Solicitor for Accused No. 4 | : | Office of Legal Aid Commission, Suva. |