

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 107 OF 2014S

STATE

vs

LAIASIA NINO RAVUDI

Counsels : **Mr. Y. Prasad and Ms. S. Serukai for State**
Ms. T. Kean for Accused

Hearing : **27 April, 2016**

Ruling : **27 April, 2016**

Written Reasons : **3 May, 2016**

WRITTEN REASONS FOR VOIR DIRE RULING

1. The accused was charged with "rape", contrary to section 207 (1) and (2) (a) of the Crimes Decree 2009. It was alleged that he raped the complainant on 8 March 2014 in a village at Rewa in the Central Division.
2. During the police investigation, the accused was caution interviewed by police on 27 March 2014 at Nausori Police Station, wherein he allegedly admitted the offence. On 27 April 2016, he challenged the admissibility of his police caution interview statements in a voir dire.

3. The prosecution called five witnesses, while the defence called the accused himself. I heard the parties and after hearing their closing submissions, I ruled the accused's caution interview statements as admissible evidence. I said I would give my written reasons later. Below are my reasons.
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 (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"*
5. In this case, the dispute between the parties was familiar. The police caution interview officer (PW3) said the accused was given his right to counsel, his right to see his relatives and was given the standard rest and meal breaks. He was formally cautioned. He said, the accused co-operated with police and gave his statements voluntarily. The above were confirmed by the police witnessing officer (PW5). Both PW3 and PW5 said they did not assault, threaten or made false promises to the accused while he was in their custody.
6. The accused, on the other hand said, both PW3 and PW5 assaulted him during the interview. He said, they also swore at him. Because of the above, he admitted the offence. He said, he did not do so voluntarily.
7. I have carefully considered the parties' version of events. I have listened very carefully to their evidence. After considering the authorities mentioned in paragraph 4 hereof, and after looking at all the facts, I have come to the conclusion that the accused gave his caution interview statements voluntarily and out of his own free will. I therefore ruled his caution interview statements as admissible evidence, and the same could be used in the trial proper, but its weight and value, are matters for the assessors to decide.

8. In giving my reasons abovementioned, I bear in mind what the Court of Appeal said in Sisa Kalisoqo v Reginam, Criminal Appeal No. 52 of 1984, where their Lordships said: “...*We have of recent times said that in giving a decision after a trial within a trial there are good reasons for the Judge to express himself with an economy of words...*”
9. The above were the reasons for my ruling on 27 April 2016.



A handwritten signature in blue ink, consisting of a large, stylized 'S' shape.

Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Nausori
Solicitor for Accused : Legal Aid Commission, Nausori