

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 015 OF 2013L

**STATE**

vs

**SUDESH MANI NAIDU**

<b>Counsels</b>	<b>:</b>	<b>Mr. Y. Prasad and Ms. S. Kiran for State</b> <b>Mr. S. Waqainabete and Ms. S. Ratu for Accused</b>
<b>Hearings</b>	<b>:</b>	<b>16 and 17 February, 2017</b>
<b>Ruling</b>	<b>:</b>	<b>17 February, 2017</b>
<b>Written Reasons</b>	<b>:</b>	<b>9 March, 2017</b>

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**WRITTEN REASONS FOR VOIR DIRE RULING**

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1. The accused was charged with two counts, first, "murder", contrary to section 237 of the Crimes Decree 2009 (Count No. 1), and second, "robbery" contrary to section 310 (1)(a)(i) of the above Decree (Count No. 2). It was alleged that, on 13 January 2013, at Lautoka in the Western Division, he went into Vidya Wati's house and murdered her. He later stole the deceased's daughter's jewellery worth \$2,200.
2. During the police investigation, the accused was caution interviewed by police at Lautoka Police Station on 16 and 17 January 2013. In his caution interview statements, he allegedly admitted the offences. In a voir dire hearing on 16 and 17 February 2017, the accused formally challenged the admissibility of the above alleged confession, on the grounds that police allegedly assaulted him repeatedly and forced him to sign his caution interview statements.

3. The prosecution called four witnesses, three police officers and a civilian. The defence called two witnesses, that is, the accused and a doctor. Altogether, there were six witnesses, on whose evidence, the court will have to make a decision.
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. The evidence of the prosecution's witnesses appear to be the same. They said, the accused was given his right to counsel and all the rights when he was caution interviewed. They said, he was formally cautioned and was given the standard rest and meal breaks. They said, they did not assault, threaten or made false promises to him, while he was in their custody. They said, the accused gave his interview statements voluntarily and out of his own free will.
6. The accused, on the other hand, said exactly the opposite. He said, he arrived at Lautoka Police Station on 16 January 2013 to be caution interviewed. He said, there were four police officers in the interview room. He said, Inspector Harish, the witnessing police officer, kicked his left leg 7 to 8 times. He said, the other police officers then repeatedly punch him possibly on the head. He said, they later rubbed chillies on his anus and penis. He said, it was painful. Later, they repeatedly kicked his back and dragged him to the cell. They later told him to sign his interview notes. He appeared to say that his interview statements, were nothing but a fabrication by police.
7. I had carefully considered and compared the parties' evidence. I find the prosecution's witnesses' evidence credible, and I accept them. I find that the police did not assault, threaten

or made false promises to the accused during his interview. I find he gave his caution interview statements voluntarily and I declared the same as admissible evidence in the trial proper on 17 February 2017.

8. Despite making the above decision, my mind was not closed. Depending on the parties' performance in the trial proper and the opinions of the assessors, the acceptance or otherwise of the above alleged confessions in the trial proper, will be a matter for the assessors. I ruled so accordingly on 17 February 2017.



**Salesi Temo**  
**JUDGE**

Solicitor for State : Office of the Director of Public Prosecution, Lautoka  
Solicitor for Accused : Legal Aid Commission, Suva.