

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 200 OF 2014S

STATE

vs

JULIAN HEINRICH

Counsels : **Ms. J. Fatiaki and Ms. U. Tamanikaiyaroi for State**
Mr. S. Valenitabua for Accused

Hearings : **27 and 28 February, 2017**

Ruling : **28 February, 2017**

Written Reasons : **9 March, 2017**

WRITTEN REASON FOR VOIR DIRE RULING

1. The accused was charged with "manslaughter", contrary to section 239 of the Crimes Decree 2009. It was alleged that, on 21 June 2014, at Suva in the Central Division, he with others unknown, assaulted Sione Tufui to death, and he was reckless as to causing Sione Tufui serious harm.
2. During the police investigation, the accused was caution interviewed by police at the crime office at Totogo Police Station on 21, 22, 23, 24 and 25 June 2014. In his caution interview statements, he allegedly admitted the offence. In a voir dire hearing on 27 and 28 February 2017, he formally challenged the admissibility of the above alleged confessions, on the grounds

that, he didn't understand the English language well and the fact that the interview was done in English, was unfair on him. He asked that the caution interview statement be ruled as inadmissible evidence.

3. The prosecution called four witnesses, all police officers. The defence called two witnesses, that is, the accused and a civilian. 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 said, he is from Nauru. He came to Fiji for secondary education. He said, he understood Nauruan and English language. He said, although he was not very good at English, he understood the same. He said, during his interview, the police gave him his right to counsel and other legal rights. He was formally cautioned and was given the standard rest and meal breaks. When cross-examined by prosecution, he said the police treated him well while he was in their custody.

7. I had carefully considered and compared the parties' evidence. The police said, they did not assault, threaten or made promises to the accused when they interviewed him. They said, the accused gave his caution interview statements voluntarily and out of his own free will. They said, they did not force him to sign his caution interview statements. They said, he was given his right to counsel and all other rights. They said, he was given the standard rest and meal breaks. They said, he was formally cautioned on numerous occasions. The accused, in his evidence, did not dispute the above. He said, when cross-examined that, he was treated well while in police custody.
8. On the basis of the above, I found that the accused gave his caution interview statements voluntarily and out of his own free will. I ruled the same as admissible evidence on 28 February 2017.
9. 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 28 February 2017.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused : **S. Valenitabua, Barrister and Solicitor, Suva & Nauru**