

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 133 of 2018

STATE

v

KING SHAN JOSUA NABUTO SALUCA MANONO

**Counsel** : Ms. Shirley Tivao for the State  
Accused appears in Person

**Dates of Hearing** : 28-31 May and 3-4 June 2019

**Closing Submissions** : 18 June 2019

**Date of Ruling** : 22 October 2019

### VOIR DIRE RULING

[1] The Accused in this case is charged with the following Information:

#### COUNT ONE

##### *Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**KING SHAN JOSUA NABUTO SALAUCA MANONO**, in the company of others, on the 22<sup>th</sup> day of March 2018, at Nasinu, in the Central Division, in the company of each other, robbed **MERE KALIVETAU AND MARIA ASILIKA**, of \$30,688.69 FJD and \$32,256.00 in foreign currency all to the total value of \$62,944.69 FJD the property of **WESTERN UNION FEXCO**.

**COUNT TWO**

*Statement of Offence*

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM**: Contrary to Section 255 (a) of the Crimes Act 2009.

*Particulars of Offence*

**KING SHAN JOSUA NABUTO SALAUCA MANONO**, on the 22<sup>nd</sup> day of March 2018, at Nasinu in the Central Division, with intent to cause grievous harm to **SEKAIA DRAUNIVASA**, unlawfully wounded **SEKAIA DRAUNIVASA** by striking him with a pinch bar.

**COUNT THREE**

*Statement of Offence*

**ASSAULT CAUSING ACTUAL BODILY HARM**: Contrary to Section 275 of the Crimes Act 2009.

*Particulars of Offence*

**KING SHAN JOSUA NABUTO SALAUCA MANONO**, on the 22<sup>nd</sup> day of March 2018, at Nasinu in the Central Division, assaulted **SARVESH GOUNDAR** and thereby caused the said **SARVESH GOUNDAR** actual bodily harm.

**COUNT FOUR**

*Statement of Offence*

**RESISTING ARREST**: Contrary to Section 277 (b) of the Crimes Act 2009.

*Particulars of Offence*

**KING SHAN JOSUA NABUTO SALAUCA MANONO**, on the 28<sup>th</sup> day of March 2018, at Nasinu in the Central Division, resisted **POLICE CONSTABLE 5143 INOKE TIKOIMALEVANI**, a police officer whilst effecting arrest in the due execution of his duty.

## COUNT FIVE

### *Statement of Offence*

**GIVING FALSE INFORMATION TO A PUBLIC SERVANT:** Contrary to Section 201 (a) of the Crimes Act 2009.

### *Particulars of Offence*

**KING SHAN JOSUA NABUTO SALAUCA MANONO**, on the 28<sup>th</sup> day of March 2018, at Nasinu in the Central Division, gave false information to **D/CPL 3683 SOLOMONI VORAKITAKI**, a public servant, which he knew to be false.

- [2] The Accused was arrested by a team of police officers in the morning of 28 March 2018. Thereafter, he had been brought to the Valelevu Police Station. Investigations into this case had been conducted by officers of the Valelevu Police Station.
- [3] The Accused was caution interviewed by Detective Corporal (D/Cpl) 3683 Solomoni Vorakitaki, at the Valelevu Police Station, on 28 and 29 March 2018. Detective Constable (DC) 3724 Josevata Vikila, was the Witnessing Officer during the recording of the caution interview statement.
- [4] On 29 March 2018, Corporal 3286 Pita Qiolevu, had recorded the Accused's charge statement. Detective Inspector Vinod Chand, was the Witnessing Officer during the recording of the charge statement.
- [5] The Accused is challenging the admissibility of the said caution interview statement and charge statement.
- [6] In the Grounds of Voir Dire, which he filed in Court, on 4 June 2018, the Accused objects to the admissibility of his caution interview and charge statements, on the following grounds:
  - I. That I was under duress from the time of arrest till the charge against me was concluded.
  - II. That I was assaulted and forced to agree to their story before, during and after the interview.
  - III. That I was coerced into giving the statements.

- IV. That I was oppressed to agree with them or my family would be charged for aiding and abetting.
- V. That I was not given my first hour of arrest rights to be seen by a legal counsel by the Police Officers.
- VI. That all the Police Officers who took part on the investigation, interview, and charge, condoned the assaults on me, to agree to their demands.
- VII. That I was deprived of meals while in Police custody.

[7] On 11 June 2018, the Accused filed Additional Voir Dire Grounds. Therein, he stated as follows:

- I. That I was assaulted, threatened and coerced by D/Cpl 3662 Peter, DC Pauliasi, DC 4142 Koroi, PC 5143 Inoke, PC 5041 Peni Naitokatoka and other police officers after arrest.
- II. That during the interview when I did not co-operate with the coercion of DC 3683 Solomon Vorakitaki and DC 3724 Josevata Vikila, they called on the other police officers who have been named on the first ground to assault me further till I agreed to them, and they assaulted me between certain questions and breaks and they threatened me throughout the interview.
- III. That I was coerced to agree to the charges by A/D/IP Vinod Chand or either the choice of being assaulted further by the other police officers who were on standby to make me agree.
- IV. That the word on the caution interview statements are all theirs and to their liking and none of it is mine.

[8] If the above Voir Dire Grounds are to be taken together, the Accused complains:

- 1. That he was under duress from the time of arrest until the charge against him was concluded.
- 2. That he was not given first hour rights of right to counsel.
- 3. He was oppressed to agree with the Police Officers or his family would be charged for aiding and abetting.
- 4. He was deprived of his meals while in police custody.
- 5. That he was assaulted, threatened and coerced by D/Cpl 3662 Peter, DC Pauliasi, DC 4142 Koroi, PC 5143 Inoke, PC 5041 Peni Naitokatoka and other police officers after his arrest and during the recording of the caution interview statement.
- 6. That during the recording of the caution interview statement he was further coerced by DC 3683 Solomon Vorakitaki (the Caution Interviewing Officer) and DC 3724 Josevata Vikila (the Witnessing Officer).

7. He was also coerced by A/D/IP Vinod Chand to agree to the charge statement.
8. That the words in the caution interview statement are not his and that the caution interview statement has been fabricated.

### The Law

- [9] In *Ganga Ram and Shiu Charan v. Reginam*; Criminal Appeal No. 46 of 1983 (13 July 1984) (unreported) the Fiji Court of Appeal outlined the two grounds to be considered for admissibility of confessions;

*"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 or 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 [1914] AC 599; DPP v. Ping Lin (1976) AC 574. Secondly even if such voluntariness is established there is also a 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 will, by trickery or by unfair treatment. Regina v. Sang (1980) AC 402. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account."*

- [10] His Lordship, Justice Daniel Goundar in the case of the *State vs. Maikeli Rawaqa and Segran Murti* Criminal Case No. HAC 42 of 2004 (16 February 2008); held as follows:

*"The principal governing the admissibility of confessions are well settled. Confessions could not properly be given in evidence unless it was shown that they were made voluntarily, that is, not obtained through violence, fear of prejudice, oppression, threats and promises or other improper inducements (Ibrahim v R [1914] AC 599). Even if such voluntariness is established, the trial Judge has the discretion to exclude the confessions on a general ground of unfairness (R v Sang [1980] AC 402). In addition, confessions could be excluded for breaches of Constitutional rights."*

- [11] Accordingly, in order for a confession made by an Accused person to a police officer to be admissible as evidence against the maker of that confession, the confession should have been made by that Accused voluntarily, meaning it should have been made by the

Accused on his own free will, with full appreciation of the legal consequences. If the said confession is made as a result of oppression, such confession would not be admissible and should be excluded. Oppression is anything that undermines or weakens the exercise of free will. However, even if such voluntariness is established, the trial Judge has the discretion of ruling such confession inadmissible, if it is obtained in an unfair manner (on general grounds of unfairness).

[12] The onus of proving voluntariness/lack of oppression and fairness is on the prosecution and they must prove these matters beyond reasonable doubt. If there has been a breach of any of the Accused's Constitutional rights, the prosecution must prove that the Accused was not thereby prejudiced.

[13] During the voir dire hearing the prosecution led the evidence of the following 10 witnesses in order to prove beyond a reasonable doubt that the caution interview statement and charge statement was made voluntarily by the Accused and that it was not obtained in an unfair manner:

1. Sergeant 3662 Peter Voi
2. PC 5143 Inoke Tikoibalewaqa
3. PC 5041 Peni Naitokatoka
4. DC 4142 Koroi Lakokilepanori
5. Detective Corporal 3683 Solomon Vorakitaki
6. DC 3724 Josevata Vikila
7. Acting Corporal 3286 Pita Qiolevu
8. Detective Inspector Vinod Chand
9. PC 4141 Freddy Cassidy
10. PC 4806 Sepesa Vakatawa

[14] The following exhibits were tendered by the prosecution during the hearing:

Voir Dire Exhibit P1 - The caution interview statement of the Accused, recorded on 28 and 29 March 2018.

- Voir Dire Exhibit P2 - The charge statement of the Accused, recorded on 29 March 2018.
- Voir Dire Exhibit P3 - Meal Book Number 41556.
- Voir Dire Exhibit P4 - Meal Book Number 41559.
- Voir Dire Exhibit P5 - Meal Book Number 41557.

[15] The defence called two witnesses: the Accused and Doctor Tara Waseiyaroi.

### The Prosecution Case

- [16] Sergeant 3662 Peter Voi testified that on 28 March 2018, he was with the Southern Division Task Force based at the Nabua Police Station. He said that officers had been briefed about this matter around 6.00 in the morning that day. They were assigned to conduct the arrest of Simeli Sugu for his involvement in a case of robbery at the Western Union Centre Point.
- [17] The team had received information that the suspect Simeli Sugu was residing in Kinoya. So they had proceeded to Kinoya in two police vehicles. About 10 officers had taken part in this operation.
- [18] At the time, they did not know exactly where the suspect was residing. Therefore, after arriving in Kinoya, the officers got off at Sarosaro Place and made inquiries about the suspect. After checking a few houses they found information about the suspect's exact location.
- [19] On reaching the suspect's house, he together with DC Koroi, PC Inoke and PC Peni had approached the front door, while the remaining officers surrounded the premises.
- [20] Thereafter, the witness testified as to how the suspect was arrested and brought over to the Valelevu Police Station around 9.00 in the morning. At the Valelevu Police Station it had been confirmed that the suspect's real name was King Shan Josua Nabuto Salauca Manono, the Accused in this case.
- [21] The witness testified that neither he nor any of the other police officers in his presence assaulted the Accused at the time of his arrest, or at the time he had been transported to the Valelevu Police Station or after he was produced at the Valelevu Police Station.

- [22] In cross examination the witness clarified that he together with the other police officers had left the Nabua Police Station around 6.30-7.00 in the morning. They had reached Sarosaro Place around 7.00 in the morning. The arrest of the Accused had been made about 30 minutes or more after arriving there.
- [23] It was suggested by the Accused that it would not take more than 5 minutes to travel from Kinoya to the Valelevu Police Station. The witness submitted that it had taken longer due to traffic congestion.
- [24] The Accused also suggested in cross examination that the police had arrested him from his home around 5.00 in the morning. It was also suggested that right after his arrest he was taken to another place prior to being taken to the Valelevu Police Station. It was also suggested that prior to being taken to the Valelevu Police Station, the witness and other members of the arresting team had assaulted the Accused. The witness denied all these suggestions.
- [25] The Accused also suggested to Sergeant Peter that he had not maintained any arrest notes nor made a statement to the police at the time because he was trying to cover up the actual time the Accused had been arrested from his home and brought to the Police Station, and also to cover up the assault on the Accused.
- [26] PC Inoke, PC Peni and DC Koroi, who were members of the team that arrested the Accused, corroborated Sergeant Peter's evidence in material particulars. They too denied having assaulted or threatened the Accused from the time of his arrest until the time he had been handed over to the Valelevu Police Station.
- [27] Detective Corporal 3683 Solomon Vorakitaki testified that he had recorded the caution interview statement of the Accused at the Valelevu Police Station. The interview had commenced at 9.40 in the morning on 28 March 2018, and concluded on 29 March 2018 at 4.50 in the evening. DC 3724 Josevata Vikila had been present as the witnessing officer during the recording of the caution interview statement. He denies that there been any assaults, threats, or coercion caused to the Accused during the caution interview.
- [28] DC 3724 Josevata Vikila testified that he was the witnessing officer during the recording of the caution interview statement of the Accused. He too denies that there been any



assaults, threats, or coercion caused to the Accused during the recording of the caution interview.

- [29] Corporal 3286 Pita Qiolevu testified that he had recorded the Accused's charge statement on 29 March 2018. Detective Inspector Vinod Chand, was the Witnessing Officer during the recording of the charge statement. The witness confirms that there was no assault, threats, or coercion caused to the Accused during the recording of the charge statement.
- [30] Detective Inspector Vinod Chand testified that he had witnessed the recording of the charge statement. He denies that any undue influence had been used against the Accused.
- [31] PC 4141 Freddy Cassidy and PC 4806 Sepesa Vakatawa testified to the meals provided to the Accused during the time of his confinement at the Valelevu Police Station.

#### Case for the Defence

- [32] The Accused asserts that on 28 March 2018, he had been arrested from his residence around 5.00 in the morning. Thereafter, he had been taken in the police vehicle to the Nabua Police Station. During that trip, he was assaulted by the arresting officers. At Nabua Police Station he was further assaulted and only thereafter taken to the Valelevu Police Station. At the Valelevu Police Station he had been taken to the Police Hall where he had been further assaulted by the arresting officers.
- [33] He had then been informed of the case and told to admit to the allegations. During the recording of his caution interview he was again assaulted by the arresting officers and threatened and coerced to admit to the allegations. During the recording of his charge statement, he was also threatened with further assaults.
- [34] Doctor Tara Waseiyaroi testified on behalf of the Accused. On 11 May 2018, the Doctor had conducted a medical examination on the Accused at the Raiwaqa Health Centre. The Medical Examination Report was tendered to Court as Defence Voir Dire Exhibit **D1**.

## Analysis

- [35] The Accused alleges that he had been arrested around 5.00 in the morning, on 28 March 2018. Thereafter, he alleges that he was taken to the Nabua Police Station where he was further assaulted and only thereafter taken to the Valelevu Police Station. At the Valelevu Police Station too, he had been further assaulted.
- [36] The prosecution version is that the Accused was arrested around 8.00 or 8.30 in the morning, on 28 March 2018. After his arrest, the Accused was directly produced at the Valelevu Police Station around 9.00 in the morning.
- [37] I have gone through the statements made to the Police by the other arresting officers. I am aware that the contents of police statements is not evidence. However, in proceedings such as these, in coming to a finding as to whether the caution interview statement or charge statement of the Accused were made voluntarily, I am of the opinion that I am entitled to refer to such statements.
- [38] I find that Sergeant Peter, the head of the arresting team, has not made a statement to the police at the time or soon after the Accused was arrested and produced at the Police Station.
- [39] DC Inoke had recorded his own statement, at the Valelevu Police Station, commencing at 8.00 in the morning, on 28 March 2018. Therein, it is clearly recorded that the raid on the Accused's house and the subsequent arrest of the Accused had been conducted at about 5.30 in the morning that day.
- [40] Similarly, PC Peni had recorded his own statement, at the Valelevu Police Station, commencing at 7.10 in the morning, on 28 March 2018. The recording of the statement had been completed at 7.20 in the morning. He states that they were briefed about the matter at 5.30 in the morning.
- [41] Likewise, DC Koroï had recorded his own statement, at the Valelevu Police Station, commencing at 7.40 in the morning, on 28 March 2018. The recording of the statement had been completed at 8.30 in the morning. Therein he states that the raid on the

Accused's house and his subsequent arrest had taken place at 5.30 in the morning on 28 March 2018.

- [42] The statements made to the Police by DC Inoke, PC Peni and DC Koroï confirms the assertion made by the Accused that he was arrested around 5.00 or 5.30 in the morning and not as testified to by the arresting officers that the arrest took place around 8.00 or 8.30 in the morning.
- [43] Furthermore, it is clear that the officers had arrived at the Valelevu Police Station at about 7.00 in the morning. It was not possible otherwise for PC Peni to record his statement at 7.10 in the morning. This further corroborates the Accused's position that he was brought to the Valelevu Police Station very much earlier than is been suggested by the Prosecution.
- [44] These are material contradictions in the Prosecution Case.
- [45] The best evidence to establish the time the Accused was produced at the Valelevu Police Station would have been the Station Diary maintained at the station. However, the Prosecution has failed to produce the Station Diary for the relevant period. Only two pages of the Station Diary of the Valelevu Police Station, for the 28 March 2018 were produced in Court. Therein, it indicates that the Accused had been brought in under arrest at 9.23 in the morning that day.
- [46] Similarly, the original of the Cell Book of the Valelevu Police Station, had not been produced in Court. What had been produced in Court were photocopies of the Cell Book entry only in relation to the 28 March 2018.
- [47] The Prosecution submitted that these books cannot be located. They produced in Court a statement made by Acting Detective Corporal 3573 Daniele Turaga, officer attached to the Criminal Investigation Department, of the Valelevu Police Station. Therein, he states that he has checked for the Valelevu Station Diary for the period, 6 March 2018 to 3 September 2018, and also for the Cell Book, at the office of the Station Sergeant. Checks have also been conducted at all the relevant offices at the Valelevu Police Station. However, the Station Diary and the Cell Book cannot be located. I am of the opinion that this is not a reasonable explanation.

[48] If the Station Diary and Cell Book of the Valelevu Police Station were available, it would have enabled the Prosecution to confirm so many other factors as well. These include the time the accused was taken out of his cell, the time he was produced for the recording of his caution interview statement on 28 March and 29 March 2018, the time he was taken back to the cell after the recording of the interview for the day or during breaks, amongst other matters.

### Conclusion

1. As stated before, the onus of proving the voluntariness and fairness of a caution interview statement and charge statement is on the prosecution and they must prove these matters beyond reasonable doubt.
2. Taking into consideration the totality of the evidence led at the hearing, I am of the opinion that the prosecution has failed to discharge this burden beyond reasonable doubt.
3. In the circumstances, I hold that the caution interview statement of the Accused (Prosecution Voir Dire Exhibit P1) and the charge statement (Prosecution Voir Dire Exhibit P2) are not admissible in evidence.



  
Riyaz Hamza  
JUDGE  
HIGH COURT OF FIJI

AT SUVA

Dated this 22<sup>nd</sup> Day of October 2019

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Suva.**  
**Solicitors for the Accused** : **Accused Appears in Person.**