

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 01 OF 2019

STATE

VS

MOSESE CAMA

Counsel: **Ms. D. Rao for State**
 Ms. K. Boseiwaqa for Accused

Date of Hearing: **8 July 2019**

Date of Ruling: **8 July 2019**

RULING

1. The accused is charged with one count of Murder, one count of Rape, one count of Burglary and one count of Theft contrary to the Crimes Act 2009.
2. On 3rd January 2019, the accused was produced before the Magistrate's Court and remanded in custody. The case was then transferred to this court. When the case was called in this court on 21st March 2019, an order was made for the accused to be psychiatrically evaluated to ascertain his fitness to plead and stand trial.

3. By an order dated 9th May, 2019, the accused was sent to St. Giles Hospital for psychiatric evaluation and a report was called. Another report was called from the Psychologist based at the Fiji Correction Service, Northern Division, where the accused was remanded.
4. Upon reports being filed as ordered, an inquiry was conducted pursuant to Section 104 of the Criminal Procedure Act and Sections 23 and 27 of the Mental Health Act.
5. The Section 104 of the Criminal Procedure Act states as follows:

104 (1) When, in the course of a trial at any time after a formal charge has been presented or drawn up, the court has reason to believe that the accused person may be of unsound mind so as to be incapable of making a proper defence, it shall inquire into the fact of such unsoundness and may adjourn the case under the provisions of section 223 for the purposes of —

- (a) obtaining a medical report; and
- (b) such other enquiries as it deems to be necessary.

(2) If the court is of opinion that the accused person is of unsound mind so that he or she is incapable of making a proper defence, it shall postpone further proceedings in the case and shall —

- (a) act in accordance with any law dealing with mental health; or
- (b) in the absence of any appropriate provision of such a law, make any order or orders that the court considers appropriate to protect the interests of the accused person and of the public.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he or she will be properly taken care of and prevented from doing self injury or injury to any

other person, and for his or her appearance before the court or such officer as the court appoints in that behalf.

(4) The Court may order that the accused person may be confined in a mental hospital or other suitable place of custody and the court shall issue a warrant in accordance with such order.

(5) Any order of the Court under sub-section (4) shall be sufficient authority for the detention of such accused person until —

(a) the Court shall make a further order in the matter; or

(b) the court finding him incapable of making a proper defence shall order the accused person to be brought before it again in the manner provided by sections 106 and 107.

6. Having examined and assessed the accused psychiatrically as ordered, the Medical Superintendent at St Giles Hospital Dr. Anne Bastholm has sent a comprehensive medical report to this court. By the time the inquiry was taken up for hearing, Dr. Bastholm had left the country and the court did not have the benefit to hear her evidence in support of the report. Her report was tendered by another doctor, Dr. Kiran Balchandra Gaiwad who elaborated on the report.

7. Dr. Kiran is the Medical Superintendent of St. Giles Hospital since 2016. Before being appointed to the current position he was in-charge of Mental Health Unit of the Labasa Hospital. He obtained a MBBS – Bachelor of Medicine, Bachelor of Surgery from Pune University, India, and a Post-graduate Diploma in Mental Health from Fiji National University. He has also obtained an International Diploma in Mental Health and Human Rights Law from Indian Law Society, Pune.

8. The purpose of the psychiatric evaluation of Dr. Bastholm was to assess the current state of mind of the accused as well as his fitness to stand trial and plead in court.
9. According to the report, the accused does not have the mental capacity to brief and instruct his lawyer of his defence strategy should one be provided. The accused does not have a basic understanding of the purpose of legal proceedings and basic legal terms. At present, the accused is most likely not able to take the witness stand and undergo examination and cross-examination.
10. According to Medico-Legal Assessment, the accused reports of marked symptoms of mental illness and, from history, he is most likely having had these symptoms for two years. Although he has been commenced on medical treatment, he still has marked symptoms of medical illness.
11. According to the report and the evidence of Dr. Kiran, the accused is not mentally capable of making a plea in court and forming a legal strategy to defend him although he is aware of the charges and the ongoing legal proceedings against him. The accused is mentally ill and displays significant symptoms of mental illness called schizophrenia.
12. Dr. Kiran took the view that schizophrenia is a severe mental illness which can be treated with medical or injectable treatments and the condition of the accused can be improved with medication provided the patient keeps taking medications all the time. It will take time to show effects. Sometimes medication might have side effects and need to change or increase or decrease the dose depending on the response from the patient.
13. Based on the report of Dr. Bastholm and the evidence of Dr. Karan I am of the opinion that the accused person is of unsound mind so that he is incapable of making a plea and a proper defence at the trial.
14. In light of the evidence of Dr. Kiran that the accused doesn't need to be transferred to St. Giles Hospital immediately because this illness is chronic, not cured on short term

treatment and can only be controlled, I proceeded to hear evidence of Aisea Rainima, the Psychologist based at the Northern Division Fiji Correction Service, under whose supervision the accused was remanded, to satisfy myself as to the suitable detention that would best guarantee the protection and interests of the accused and that of the public.

15. Mr. Rainima holds a Bachelor of Arts in Law and Psychology and a Post Graduate Diploma in Psychology from University of the South Pacific and has been in practice as a Psychologist for six years at the Labasa Correction Centre. The accused had been under Mr. Rainima's supervision before he was transferred to St Giles Hospital.
16. According to Mr. Rainima's report, it seems that the condition of the accused had not improved while he was being kept at the Labasa Remand Centre under the supervision of Dr. Fatima who was in charge of the Stress Management Unit at Labasa Hospital. The doctor had visited the accused only once during his whole stay at the Remand Centre.
17. State's position with regards to a detention is in favour of the remand centre because it has better security, visiting hours, facilities like a registered nurse, a psychologist to assist and counsel the accused on a daily basis.
18. Ms. Boseiwaqa on the other hand raised concerns about the accused being detained at the remand centre with other inmates and preferred a detention at the Labasa Hospital where doctors are available round the clock. She also spoke about the easy accessibility by the relatives if the accused is detained at the Labasa Hospital.
19. Mr. Rainima was of the view that the accused could run the risk of deliberate self-harm if he is left in solitary isolation and favoured accused's association with inmates who are not mentally unstable.
20. Having heard evidence led and perused the report tendered, I am of the view that the accused be confined in a mental hospital to facilitate his treatments, prevent self-harm and also to protect the interests of the public.

21. Following Orders are made:

- a. I hold that the accused person currently is of unsound mind so that he is incapable of making a plea and a proper defence at the trial.
- b. The accused is ordered to be confined in St Giles Hospital for a period of three months under medical supervision.
- c. The Medical Superintendent at St Giles Hospital is ordered to further evaluate the accused psychiatrically and send a report returnable on 4th October 2019.




Aruna Aluthge
Judge

At Labasa

8th July, 2019

**Counsel:- Office of the Director of Public Prosecution for State
Legal Aid Commission for Accused**