

this Court did not notice any shortcomings in the recording of the caution interviews of the 2nd and the 3rd Accused that would necessitate this Court to invalidate these two caution interview statements on the ground of violation of the voluntariness requirement or absence of fairness in line with the **House of Lords** pronouncements in the cases of *Ibrahim v R*³ and *R v Sang*⁴.

5. In relation to the 2nd Accused, Prosecution witness **PC 5469 Samuela** gave evidence of conducting the caution interview of this Accused **TUPOU WAQABACA**. He claimed that he conducted an interview with 2nd Accused in question-and-answer manner on 05/09/2021 and 06/09/2021, where himself and the 2nd Accused signed on every page. According to him, at the interview only himself and the 2nd Accused had been in the room, where he cautioned the Accused before and during the interview. In cross-examination, he affirmed that he did not assault the accused expecting answers and that the Accused did not make any complains about this interview. He also confirmed this Court that he noticed injuries on the Accused, and he had been medically examined before the interview. This witness further alluded that at the conclusion of the interview the 2nd Accused wanted to apologies for his involvement in this matter.
6. In relation to the 3rd Accused, Prosecution witness **PC 5514 Krishneel** gave evidence of conducting the caution interview of the this Accused **SIMIONE ROKACIKACI**. According to him, he had taken this Accused for medical examination before the caution interview. The interview had commenced around 12 pm on the same day, where himself and the 3rd Accused had signed the recorded interview. At the interview, there had been himself, the 3rd Accused, and his father in the room as requested by the Accused. He alluded that he cautioned the Accused before the interview and himself or any other officer didn't threaten or assault the accused. Further, this officer claimed that the Accused didn't make any complains before, during or after the interview. However, he had noticed injuries on the head of the Accused. At the conclusion of the interview, this witness had given the Accused to read the recorded interview.
7. Therefore, in considering the above detailed evidence led at the Voire dire inquiry and this Court not noticing any breaches of the required fundamental standards, this Court holds that it is safe to admit the caution interviews of the 2nd and the 3rd accused in evidence in this matter.
8. The caution interview of the 1st Accused **JOSUA VULIVULI** had been recorded by **PC 5479 Elik**. In giving evidence at the Voire dire inquiry this witness informed this Court that he conducted the caution interview of the 1st Accused on 05/09/2021 at 10.40 am. According to him, before recording the caution interview, he had taken the 1st Accused to the hospital for medical examination and he had requested for the medical examination and seen the medical report after examination. However, as per his evidence, he informed this Court that he can't recall seeing any injuries on the Accused when conducting the caution interview. He further claimed that he started recording the caution interview at 10.40 am on 05/09/2021.

³ Supra, 1

⁴ Supra, 2

9. In cross examination, this witness admitted that he had made some mistakes in the caution interview statement and deleted those mistaken parts. He further admitted that he had not initialed the deleted portions and obtained the initials of the 1st Accused. He further confirmed that after the medical examination it would have taken about 15 minutes to bring the 1st Accused back to the police station and commence the caution interview.
10. In observing the medical report of the 1st Accused marked as **DEX (1) (a)** by the defence at this trial this Court identified that according to the medical examination conducted by the doctor in filling **DEX (1) (a)** he had noticed 2 lacerations on the scalp of the 1st Accused and another injury below the right eye of the 1st Accused. Further, as he informed, police officer **PC 5479 Elik** had seen the medical report with details of these injuries before commencing the caution interview. When facts were such, this Court was surprised to hear from this officer in Court that he **can't recall seeing any injuries on the Accused** before conducting the caution interview when the injuries were on the scalp and the face. Further, though this witness mentioned that it would have taken about 15 minutes to bring the 1st Accused back to the police station after the medical examination for the caution interview, according to documents produced to Court, the medical examination had concluded at 10.40 am on 05/09/2021 and the caution interview had also commenced at 10.40 am the same day, which is an impossibility. It appears that no break had been given to the 1st Accused with the noted injuries after returning from the hospital.
11. In relation the caution interview of the 1st Accused, this Court noticed the vagrant disregard demonstrated by the officer who recorded the interview, where his disconcert was capable of raising reasonable questions whether the officer treated the accused fairly or vehemently disregarded his condition at the time of recording the interview, where he has not even noticed injuries the medical officer observed on his face and the sculp as per **DEX1 (1) (a)**. In considering the importance of fairness in treating the accused in recording such a caution interview statement, apart from the requirement of voluntariness, this Court take guidance from the **House of Lords** pronouncement in the cases of **R v Sang and R Mangan [1980] AC 402**. Therefore, as per revealed circumstances, this Court does not find it safe to include the caution interview of the 1st accused as a part of the evidence. Thus, in using the discretion of this Court in relation to fairness, this Court exclude the caution interview statement of the 1st Accused from evidence at the trial.



A handwritten signature in black ink, appearing to read 'Thushara Kumarage', written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 18th day of September 2023

cc: - Director of Public Prosecutions
- Legal Aid Commission