

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 81 OF 2020**

**STATE**

**V**

**REVONI YALAYALA**

Counsel: Mr A. Singh for State

Accused in person

Dates of Hearing: 10, 11 and 14 July 2024

Date of Ruling: 14 July 2024

**RULING ON VOIR DIRE**

1. The Prosecution seeks to adduce into evidence the record of caution interview and the charge statement of the Accused at trial proper. The Accused objects to the admissibility of the caution interview on the following grounds:

- I. **THAT** I was arrested in front of my nephew and his wife while we were still having breakfast at Naikabula, Lautoka on the 20/04/2020.

- II. **THAT** at the time of my arrest, I was assaulted in front of my nephew and his wife at Naikabula.
  - III. **THAT** at the time of my arrest, I was not told as to the reason for my arrest, and I was not taken directly to the station but rather taken to the forest and assaulted by several police officers which I can identify and know their names.
  - IV. **THAT** I was assaulted when we reached the forest and was told to admit to every allegation, they were going to interview me in.
  - V. **THAT** I also have an eyewitness who saw what happened in the forest as he was coming back from cutting firewood.
  - VI. **THAT** at the time of my interview at Lautoka Police Station, I was interviewed and charged for 2 allegations in one transaction that have different complainants.
  - VII. **THAT** at the time I was in Lautoka Police Station when I was already charged, I was then picked up by the Namaka police officers and taken to Namaka Police Station.
  - VIII. **THAT** at no time I was informed as to the reason they were taking me to Namaka Police Station.
  - IX. **THAT** upon leaving Lautoka Police Station heading to Namaka Police Station I was punched in the ribs and assaulted, threatened to also admit to all the allegations they were going to interview me in.
  - X. **THAT** after I was assaulted at Namaka Police Station, I was taken to Nadi Police Station and threatened to admit to the allegation they were about to interview for or else they were going to torture me further.
  - XI. **THAT** I was then interviewed and charged with 2 other allegations that had different complainants in one transaction.
  - XII. **THAT** at the time I appeared in the Magistrate Court in Lautoka regarding these allegations, I did inform the Court that I was injured and if I could be medically examined.
  - XIII. **THAT** at the time of informing the Court, I was then given a Court Order to be taken for medical examination, but the escorting officers refused to obey the orders.
2. The test for admissibility of a confessional statement made to a police officer is whether that was made freely or not due to threats, assaults or inducements made to the suspect by a

person or persons in authority. Further, oppression or unfairness also leads to the exclusion of the confession. Finally, where the rights of a suspect under the Constitution have been violated, this will lead to the exclusion of the confessions obtained unless the Prosecution can show that the suspect was not prejudiced thereby.

3. What I am required at this stage is to decide whether the interview/charge was conducted fairly and whether the accused gave the statements voluntarily. If I find that the confession was obtained having violated the Accused's constitutional rights, then I can in my discretion exclude the interview.
4. The burden of proving voluntariness, fairness, lack of oppression, compliance with constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the Accused rests always with the Prosecution. The Prosecution must prove these matters beyond a reasonable doubt. In this ruling, I have reminded myself of that.

#### **Analysis**

5. The Prosecution called three police officers at the *voir dire* hearing. The first witness Sgt. Netava Yalayala (Netava) was the officer who arrested the Accused on 20 April 2020 from a house in Naikabula. He testified that he and his team were instructed to arrest Revoni Yalayala (Revoni) and they left the Station at around 10.30 am. When the arresting police team reached the house where the Accused was, he saw the Accused having breakfast with his nephew and upon being sighted of their arrival, the Accused ran to the back of the house. He and SC Taniela chased the Accused, they both got hold of the Accused and arrested him.
6. Upon arrest, the Accused was cautioned and the reason for the arrest was explained in English. The Accused cooperated with the police. The Accused offered no resistance. Therefore, the Accused was not handcuffed. No pressure, assault or intimidation took place. The Accused was then escorted straightaway to the Lautoka Police Station which was 20-30 minutes' drive from where he was arrested. He handed the Accused over to the uniform branch around midday. The police vehicle was not stopped anywhere until it reached the Station. The Accused was not assaulted, intimidated, or pressured during the journey. He received no complaint from the Accused during the arrest or the transport. He knew the

Accused even before the arrest. The Accused is related to him as a brother from his mother's side. No complaint had ever been lodged against him or his team by the Accused at any time after the arrest.

7. The Accused Revoni (DW1) in his evidence-in-chief said that he was arrested at the house at Naikabula when he was having breakfast with his family, his nephew, wife, mother-in-law, and son. While being conveyed, he was being assaulted in the moving vehicle by Netava and other officers. They then took him to the forest and further assaulted him by handcuffing him in the back. They beat both legs with a big stick, telling him to admit and, if not, they would further assault him. He received injuries in both legs and ribs. He gave the names of the officers who assaulted him to the Magistrate. While at the Station, he was just sleeping inside the cell. He was never interviewed by police. Kelepi Ratu was with him in the cell block. Kelepi saw what happened. He forgot to name Kelepi as a witness.
8. Under cross-examination, the Accused said that he was assaulted even during the arrest by pulling him down to the ground. The officers beat him with their hands in a bad way in front of his nephew Jone Sauqaqa, sister-in-law Akata and sister-in-law's mother. There were about 20 officers and they all assaulted him. He received injuries in his right ribs and both legs and became unconscious.
9. The arresting officer Netava and his team assaulted him inside the vehicle. In the forest, they used a big and long stick to beat him several times. He received injuries in his legs, hips, and face. His brother Apisai, who had gone to cut firewood, saw him being beaten up in the forest.
10. He could not remember being interviewed. There is no station diary entry to say that Eliki interviewed him. His signatures to the interview and charge statements were obtained by force. He complained to Judge Sharma that the police disobeyed the court order by not taking him for a medical examination.
11. DC Netava was the only officer who testified to the arrest and transport of the Accused to the police Station. His evidence is important to address the first five grounds advanced by

- the Accused. Those grounds concerned whether the Accused was explained the reason for arrest, whether he was assaulted and intimidated to confess during the arrest, in a forest and during transportation.
12. It was contended by the Accused that if he tried to evade the arrest, he should have been charged with Resisting Arrest. Netava's explanation for not charging the Accused for Resisting Arrest was that he cooperated with the officers after the arrest. This explanation is acceptable.
  13. There is no dispute that the Accused was having breakfast with his nephew when the police team arrived to arrest the Accused. Netava confirmed that the Accused's nephew Jone witnessed the arrest. If the Accused was assaulted at the time of the arrest in the presence of his nephew, he could have summoned his nephew to substantiate his claim. He didn't do so. It is reasonable to assume that the Accused was not assaulted during the arrest. In his evidence-in-chief, the Accused did not say that he was assaulted during the arrest.
  14. It was also contended that if the Accused was brought to the police station around mid-day on 20 April 2020 this fact should have been reflected in the Station Diary (SD). The State conceded that there was no SD entry to that effect. The absence of an entry in the SD does not necessarily mean that the Accused was not brought to the Station during midday. Netava was not the officer who made the entries in the SD. Therefore, his inability to explain the non-existence of the SD entries is understandable. The record of the interview indicates that the interview commenced at 13 Hrs on 20 April 2020. It can be assumed that Netava told the truth about the time the Accused was brought to the Station.
  15. What is important is whether the said timing is consistent with the Accused's allegation that he was taken to a forest and assaulted during the transport. Since the Netava's team left the Station for Naikabula at around 10.30 a.m., given that the drive took 20-30 minutes, it could be assumed that the arrest was effected at around 11 a.m. Netava, under cross-examination, admitted that the arrest occurred around 11 a.m. They had spent nearly 10 minutes at the place of the arrest. The fact that the officers had returned to the Station by midday to start

the interview at 1 p.m. indicates that there had been no time for them to take the Accused to a forest.

16. The Accused in his grounds states that he has an eyewitness brother to prove that he was assaulted in the forest. In his evidence, he repeated the same and said his brother Aspisai saw him being assaulted. However, no such witness was called.
17. During cross-examination, it was never suggested to Netava that the Accused was taken to a forest and assaulted. The Accused said that he received injuries as a result of the police assaults. He must have received serious visible injuries if he was assaulted by the officers in the manner he described in his evidence. However, there is no evidence that the Accused had any visible injuries.
18. The copy record of the Magistrates Court shows that the Accused had complained to the Magistrate that he was assaulted. However, he had not complained to the Magistrate, as his co-accused Alexio Moli had done, that he was assaulted by police officers. No medical report was tendered despite the court order for the Accused to be taken for a medical examination. The Accused said that the police officers disobeyed the Magistrate's order. He further said that the order was given during Covid time. If the Accused was not taken for a medical examination, disobeying a court order, he could have complained to the Judge when the case was transferred to the High Court. There is no evidence that such a complaint was made. The record shows that the Accused was first produced before this Court on 19 June 2020. He has informed the Judge that he was assaulted by prison officers. No complaint had been made against the police officers.
19. Three police officers who testified in Court had closely observed the Accused before he was produced before the Magistrate. None of them had seen any injuries on the Accused's body. At the interview, the interviewer inquired the Accused if he was fit to be interviewed [Q 17-19 and 59-61]. He had not complained of any injuries or made requests for medical attention. He had been given the right to consult a lawyer from the Legal Aid Commission and the opportunity to talk to his wife. Exercising those rights, the Accused had indeed spoken to his wife over the phone during the 15-minute break on day two (21 April 2020) after Q 56.

He could not speak to the counsel from the Legal Aid Commission because the phone was not responding. There is no evidence that the Accused made any complaint to his wife of having been assaulted or of injuries.

20. The Accused did not dispute that Netava is related to him as his brother. It is unlikely that Netava or his colleagues in his presence would assault the Accused who is Netava's brother. Netava is unlikely to concoct evidence against his brother. I accept Netava told the truth.
21. PW2, DC Elic McComber who interviewed the Accused on 20 and 21 April 2020 at the Lautoka Police Station gave evidence on what happened at the interview. He commenced the interview at 1300 Hrs. on 20 April 2020 and suspended at 1423 Hrs conceding to the Accused's request that he needed to rest. On 21 April 20 at 6.30 a.m., the interview recommenced early morning and was concluded at 1254 Hrs on 21 April 2020. The Accused made no complaint about anything before the commencement of the interview. He cautioned and explained the rights and the charge against him; the Accused was not assaulted, threatened, or put pressure on him to confess. He tendered the 12 page-record of the interview marked as PE-1 consisting of 111 questions and answers.
22. DC Elic confirmed that the Accused was in good health, and he appeared normal before and during the interview. In his grounds, the Accused has not raised any concern or complaint on how the interview and the charging were conducted. Although the Accused said that he was never interviewed, he raised no ground to that effect. Having filed the grounds of *voir dire* to challenge the admissibility of the record of the caution interview, he is estopped from saying that he was never interviewed.
23. DC Elic said that DC Mosese was present throughout the interview as the witnessing officer. However, the signature of DC Mosese does not appear on the record. The Accused contended that had DC Mosese been present, he should have signed the record of the interview. Sgt Elic maintained that DC Mosese was present during the interview. But he could not explain why Mosese's signature is not present. It appears that after Q49, DC Elic, in the process of explaining the purpose of the interview, had informed the Accused why Mosese was present during the interview. The Accused had signed to acknowledge the same. That shows that DC

Mosese had been present at the interview. Since the Accused has not raised any issue with the interview, the question of whether a witnessing officer was present during the interview is of no significance. Although the Accused cross-examined DC Elic on the basis that he was assaulted and abused during the interview, he has never raised any ground on that basis.

24. PW4 Cpl. Amelia formerly charged the Accused at 1315 Hrs on 21 April 2020 in the presence of Sgt Ranadi. She tendered the charge statement marked as PE 2. The Accused was given all his rights. The Accused was not assaulted, threatened, or pressured to make a statement. The Accused spoke to Ms Kelly, the Counsel from Legal Aid, for four minutes at 1321 Hrs, before giving his statement. Cpl Amelia confirmed that the Accused was fit and had no visible injuries and received no complaint or request for a medical examination. Sgt Amelia's evidence was not challenged by the Accused.
25. After the Prosecution closed its case, the Accused wanted the witnessing officer to be present to answer why his signature was not present in the record of the interview. He alleged that he was not getting a fair trial as the witnessing officer Sgt Mosese was not called by the Prosecution. He also alleged that he filed so many grounds of *voir dire* before Sharma J when the file was being handled by Ms Uce and that by taking over the file by Mr A. Singh from Ms Uce, who was aware of everything that happened in Court No 2, was unfair. He even went on to the extent of alleging that the Court was violating his rights, being very unfair to him and that there was an abuse of process. He also alleged that he was being harassed by Mr Singh by asking repetitive questions. He protested and demanded that the matter be stood down to call the witnessing officer. He eventually sought permission to keep away from Court which he thought was unfair.
26. When the Accused repeatedly disturbed the Court proceedings, the State Counsel made an application for trial *in absentia*. The Court allowed the application under Section (14) (2) (h) (ii) of the Constitution.
27. The Accused's main allegation was based on the Court's refusal to allow his late application to call a Prosecution's witness, DC Mosese, as a Defence witness. DC Mosese is said to be the witnessing officer at the interview. When the Prosecution indicated that they did not



intend to call this witness, the Accused made no application that DC Mosese be called as a witness so that he could be subjected to cross-examination. As the Accused is unrepresented, I considered if any prejudice would be caused to the Accused if the Court did not call this witness. Since the Accused had not raised any ground concerning how the interview was conducted and he had not complained of any ill-treatment on the part of the police during the interview, I did not see any prejudice being caused to the Accused by this witness not being called.

28. The Accused is entitled to waive his right to be present guaranteed under Section (14) (2) (h) (ii) of the Constitution. Further, the conduct of the Accused was such that the continuation of the proceedings in his presence was impracticable. Therefore, I decided to proceed to trial *in absentia*.
29. I am satisfied that the police officers told the truth in Court. I accept their evidence. The Prosecution proved beyond reasonable doubt that the interview and the charge were conducted fairly, without violating Accused's constitutional rights and that the Accused gave the caution statement and the charge statement voluntarily.
30. I hold the record of the interview and charge statement to be admissible at the trial proper.



Aruna Aluthge  
Judge

14 July 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State

The Accused in Person