

IN THE SUPREME COURT OF FIJI  
 Appellate Jurisdiction  
 Criminal Appeal No. 56 of 1958

JIOJI DAUDRAVUNI

Appellant

v.

REGINA

Respondent

Alleged confession by accused—admissibility challenged—Magistrate agreed to Counsel's suggestion that question of admissibility should be deferred and trial continued—accused called on to make his defence—admissibility of "confession" decided in the judgment.

*Held.*—(1) When the admissibility of any alleged confession (or any other statement) is in issue a court should try and determine the issue of admissibility at once.

(2) As the prosecution case rested largely on the alleged confession the case for the Crown was not closed when the accused was called upon to make his defence.

(3) The trial was a nullity as the procedure adopted was contrary to s. 201 of the Criminal Procedure Code.

Appeal allowed.

References:—

Criminal Procedure Code.

LOWE, C.J. [4th September, 1958]—

The trial in this case is a nullity. The learned Magistrate should have followed the well established practice, which amounts now to a rule of law in my opinion, that when the admissibility of any confession or other document or evidence is challenged there must at once be a "trial within a trial" to determine the admissibility. The learned Magistrate would appear to have been asked to defer consideration of the question of admissibility, Counsel then appearing having stated that such was the practice in Courts in Fiji. That is not so and I have not been able to obtain any evidence that it ever was. The effect of the learned Magistrate deferring consideration as to admissibility until he wrote his judgment was that he called on the accused to make his defence before the Crown case (which rested largely on the alleged confession) was concluded. This was in breach of s. 201 of the Criminal Procedure Code and is fatal to the conviction as the trial was not in accordance with the law. The appeal is allowed to the extent that there was, in effect, no trial and the appellant is to be tried again for the same offence before a Magistrate of competent jurisdiction. It follows, of course, that the conviction is quashed and the present sentence is set aside. If he is again convicted, the period during which the accused has been in custody is to be taken into consideration by the trial Magistrate when determining sentence.