

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 30 OF 2015

STATE

-v-

1. MANASA TALALA
2. SERUVI CAQUSAU
3. KELEVI SEWATU
4. PENAIA DRAUNA
5. FILISE VERE
6. VILIAME VEREIVALU
7. JONA DAVONU
8. PITA MATAIRAVULA
9. SENITIKI NATAKASAVU

Counsel: Mr. Lee Burney with Ms. J. Fatiaki for the State

Mr. I. Khan for Accused

Dates of Hearing: 20th September 2016 – 26th September 2016

Date of Ruling: 07th October, 2016

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the cautioned interviews of 1st, 2nd, 3rd, 4th, 5th, and 9th Accused.
2. The test of admissibility of all confessional statement made to a police officer is whether that was made freely and not as a result of threats, assaults or inducements made to the accused by person or persons in authority. Further, oppression or unfairness also leads to the exclusion of the confession. Finally, where the rights of the suspects under the Constitution have been breached, this will lead to the exclusion of the confessions obtained thereby unless the Prosecution can show that the suspect was not thereby prejudiced.

3. What I am required at this stage is to decide whether the interviews were conducted fairly and whether the accused gave the statements voluntarily. If I find that the confessions were obtained violating their constitutional rights, then I can in my discretion exclude the interviews.
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 at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
5. The defence objects to the admissibility of the caution interview of the Accused persons on the following grounds:
 - a. The Accused was not informed promptly, in a language that he or she understands, of–
 - i) The reason for the arrest or detention and the nature of any charge that may be brought against that person;
 - ii) The right to remain silent; and
 - iii) The consequences of not remaining silent;
 - b. To remain silent;
 - c. To communicate with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission;
 - d. Not to be compelled to make any confession or admission that could be used in evidence against that person;
 - e. To communicate with, and be visited by,-
 - i) His or her spouse, partner or next of kin; and
 - ii) A social worker or religious counsellor

- I. The Accused persons were denied their rights to consult a solicitor when arrested and after arrest;
- II. That the statements were obtained in circumstances that were unfair to the Accused persons;
- III. The Accused persons were systematically softened during the interview in that they were kept in custody in circumstances which was degrading and inhumane;
- IV. That the statements were obtained in circumstances that were oppressive;
- V. That the statements were obtained in breach of Rule 2,3 and 7 of the Judges' Rules; and
- VI. That the statements were obtained in breach of section 13(1) of the Constitution of Fiji.

Now I look at the evidence presented at the trial within trial.

Case for Prosecution

Evidence of ASP Kushi Ram

6. In August, 2014, ASP Ram was attached to Internal Affairs Unit based at the Police Headquarters in Suva. On the instructions of Senior Superintendent Luke Navela, he interviewed the 1st accused Manasa Talala on 24th August 2014 at the Namaka Police Station.
7. He made a handwritten record of the interview which was witnessed by officer Suliano Tevita. Manasa himself and the witnessing officer signed the record of the interview. Record of interview was tendered marked as E1.

8. 146 questions were put to the accused. Interview commenced on the 27th August, 2014 at 11.19 a.m. and concluded at about 3.10 p.m. Accused was informed of the reasons as to why he was being interviewed. He was properly cautioned.
9. The accused was informed his right to consult a lawyer of his choice or consult a lawyer under the Legal Aid scheme. Accused was also informed that he was not bound by the Police Act, Police Regulation and Force Standing Orders, Directives or Decrees.
10. During the conduct of this interview, the accused was afforded sufficient breaks and provided meals. Witness pointed out the time slots that the accused was given breaks and meals.
11. Interview was suspended at 1652 hrs. on the 27th August 2014 and the Accused was released. Interview recommenced at 1014 hrs. on 28th August 2014.
12. Witness tendered the entries made in the Meals Book Register of the Namaka Police Station on 27th and 28th August, 2014.
13. Before, during or after the interview, witness or any other officer did not threaten the accused. Accused was treated fairly.
14. Before he concluded the interview, witness asked the accused if he wanted to alter the same. Accused was given an opportunity to read the record of interview.
15. Director, Internal Affairs arranged for the accused to be present at the Namaka Police Station to be interviewed on the 27th of August 2014.
16. Under Cross-examination the witness said that the Director, Internal Affairs called the accused and informed him to be present at the police station. He made no entry in his notebook in this regard. He, by virtue of memory, recalls what happened in August 2014. SP Navela told him that he called the accused to come to the station.

17. He can't recall if Cpl. Petero brought SP Manasa to the station. He admitted that there is a entry in the Internal Affairs Police Station Diary as of the 27th of August 2015, to the effect that: "*Cpl. Pedro brought SP Manasa Talala and others for questioning.....*"
18. Before the commencement of the interview, accused was not afforded following rights under the Constitution. To be informed of the nature of any charge that may be brought against him; right to remain silent; to be informed of consequences of not remaining silent; that he is entitled for Legal Aid; right to communicate with his spouse or partner, religious counsellor or social worker. Reason for his arrest and right to communicate with a solicitor of his own choice were explained verbally.
19. Witness admitted that Force Standing Order that a junior officer shall not interview a senior officer was not complied with. He also admitted that, in the interview, he referred to several statements of other accused. Witness said that, in accordance with his training, he was permitted to cross examine an interviewee on the basis of a statement of another accused. Witness admitted that, before going for reconstruction, accused was not informed that he was not obliged to go to the reconstruction site.

Evidence of A/IP Suliano Tevita

20. Officer Tevita played a dual role. He was the investigating officer as well as the witnessing officer of the caution interview of the 1st accused, held at Namaka Police Station.
21. No officer threatened or forced the accused. During or after the recording of that interview, accused did not complain of anything. He was treated fairly.
22. Accused 1, 2, 3, 5 and 9 were informed through the Divisional Police Commander, Western SP Salacielu Naivilawasa to be present themselves at the Namaka Police Station.
23. Under Cross-examination, witness said that the 1st accused voluntarily came to the station on the directions of the Divisional Police Commander. Witness admitted that he did not keep any record on a notebook issued by the Commissioner pursuant to Force Standing Order 97.

24. Witness admitted that he did not stay in the interview room throughout the interview.

Evidence of Inspector Epeli Senitiri

25. In August of 2014, witness was attached to the Major Crime Unit. He was called in to assist the investigations by the Director Internal Affairs, Mr. Navela in conducting interviews on two of the suspects Cpl. Seruvi and DC Filise.

26. Cpl. Seruvi's interview took place at the Crime Officer at the Namaka Police Station. Special Sergeant Mereani Tabaki was present during this interview. He signed the interview recorded on a computer. Cpl. Seruvi and witnessing officer Sgt. Mereani also signed. The record of interview of the 2nd accused was tendered marked as E3.

27. Before the commencement of the interview, accused did not complain of anything. Interview commenced at 0910 hrs. on the 28th of August 2014 and concluded after 1600 hrs. Accused was informed of the reason for the interview and was cautioned properly during the interview.

28. Accused was given an opportunity to consult a lawyer, a family member or a religious counsellor. He did not wish to exercise any of those rights. Accused was afforded sufficient breaks and provided meals during the interview. Interview was suspended at 1647 hrs. for further continuation. Accused was then released. It was recommenced on the 12th of November 2014 at 1605 hrs. to be concluded at 1655 hrs. The break was for the compilation by the investigating officer and DPP's sanctions. Accused was afforded the opportunity to read what had transpired earlier on the 23rd of August when it was recommenced on the 12th of November 2014. Accused was not threatened or forced in any way. He was treated with all respect and all the rights were afforded to him.

29. At the conclusion of the interview the accused read through the record. He was asked if he would like to change or alter any part of that interview.

30. DC Filise's interview was also conducted on the 27th of August 2014 at the same Crime Office, in the presence of W/Sgt. Mereani at the Namaka Police Station. It was recorded

on a desktop in question and answer format. Interview was signed by the suspect, interviewing Officer and the Witnessing Officer. The record of interview of Filise Vere was tendered marked as E 4.

31. Interview commenced at 1500 hrs. Accused was informed of the reason for the interview. Accused was given an opportunity to consult a lawyer, a family member or a religious counsellor. He did not wish to exercise any of those rights. Accused was afforded sufficient breaks and provided meals during the interview. Interview was suspended at 1700 hrs. for further continuation on the following day. Accused was then released from custody.
32. On the 28th of August 2014 – 1145 hrs interview recommenced for DC Filise. At 1200 hrs it was suspended for reconstruction of the scene at Malevu Hill, Sigatoka to be recommenced at 1630 hrs.
33. Accused was not threatened or forced in any way. He was treated with all respect and all the rights were afforded to him. He did not complain of anything.
34. Under Cross-examination witness admitted that, before the caution interview commenced, he did not give the accused's constitutional rights. He was explained the reason for his detention verbally. Witness denied that the interview was obtained involuntarily under circumstances that were unfair to the accused.
35. Witness denied that, before the interview commenced, he told the accused that if he did not cooperate in admitting the allegations he will be charged for a serious offence; that he will be disciplined and that he will lose his job; that he has to vacate his police barracks and his family will suffer.
36. Witness also denied having told the accused that he would be made a police witness, if he gives names of other Police Officers.

37. Witness admitted that, on one occasion, he was interviewing two of the accused persons, 2nd and 5th accused, at the same time. Both the accused were taken for reconstruction at the same time. That was on instructions he received because of the limited resources and the distance that they had to travel to the scene of crime. He denied that he used one interview against the other.
38. Witness said that he was not aware that Seruvi had already given a statement to Police on 22nd August 2014. Witness said that he was not aware how the copy of the disclosure did not have the signature of the witnessing officer. The original record of the cautioned interview had the signature of the witnessing officer.
39. Before the reconstruction, right to consult a solicitor was not explained again. Witness did not tell the accused that he was not obliged to go to the reconstruction site.
40. Before the commencement of 5th accused Filise's interview, accused was not afforded his rights under the Constitution.
41. He denied that he threatened Filise that if he did not cooperate and admit he will be in big trouble; will lose his job and his family will suffer. Filise's interview commenced on 27th and continued on 28th. Seruvi's interview was started on the 28th in the morning. Filise's interview was suspended and he was released. When Seruvi was called in the morning at 9 am for interview, Filise was still at home. Therefore, Seruvi's interview was conducted until 1122 hrs. When Filise arrived, Seruvi's interview was suspended and Filise's interview resumed.
42. Witness said that he was unable to explain why the copy of the record of the caution interview first disclosed to the Defence did not carry the signature of the witnessing officer. Witness denied that the signature of the witnessing officer was placed later.
43. Under Re-examination, witness said that, soon after the interviews were completed, records were printed out and signed by the witnessing officer. He further said that he did

not have any authority to offer accused persons immunity from prosecution. He was not aware whether or not the 2nd accused was brought in under arrest to the station.

Evidence of Mereani Tabaki

44. When the witness was serving in the Internal Affairs Unit, she played a dual role as the witnessing officer as well as the recorder of the caution interviews of Cpl. Seruvi Raqosau and DC Filise conducted by Epeli Senitiri. She recorded both the interviews and signed soon after the interviews were concluded. Accused were afforded their rights and treated well. They were not threatened or forced.
45. Under cross examination, witness admitted that she wore two hats at the interview, one for recording and one for witnessing. She said that such a procedure was not incorrect under the Police Force Standing Orders.
46. Interviewer first asked some questions from Filise. She typed on the laptop. Then the interview was suspended to start the interview of Seruvi. Witness rejected the assertion that she did not sign any of the interviews on the date they were completed. She only signed the original. She doesn't know anything about the copies disclosed to the Defence.

Evidence of Petero Tupici

47. When the witness was attached to the Internal Affairs Unit he interviewed Kelevi Sewatu, the 3rd accused, at the Namaka Police Station. Officer Sekiusa who passed away witnessed the interview. Witness recorded the interview on a computer and signed the record of interview. The 3rd accused, and witnessing officer also signed. Record of interview was tendered marked as E5. Interview commenced on the 27th August, 2014 and continued on the 28th August, 2014.
48. Accused was informed as to why he was being interviewed. He was afforded his constitutional rights and given sufficient breaks and meals. The accused was not threatened or forced. He was treated nicely.

49. Under cross examination, the witness said that he could not recall if the accused was afforded his constitutional rights before the interview commenced. Accused gave the interview voluntarily and signed the record in his presence. Before the reconstruction, right to consult a solicitor was not explained again. Witness did not tell the accused that he was not obliged to go to the reconstruction site.

Evidence of Tomasi Tukana

50. Witness conducted the interview of Penaia Drauna at the Lautoka Police Bure when he was attached to the Special Taskforce Unit. He himself recorded the interview on a laptop and signed the same at the conclusion. Accused and the witnessing officer Nacani also signed. Witness tendered the record of interview marked as E7.
51. Accused was informed as to why he was being interviewed. Caution was administered. Accused was afforded his constitutional rights. He was not threatened or forced to make a statement. He was given sufficient breaks and treated fairly.
52. Under cross examination, witness said that accused's movements at the Lautoka Police Station were recorded in the Station Diary. Witness denied that he told the names appear in question No.22. He did not give a promise that the accused will be made a State witness. He was not aware of a previous statement given by the accused and did not inquire about such a statement. Accused was not in the custody when the interview was conducted.

Evidence of Nacani Bolabiu

53. Witness Nacani witnessed the interview of Penaia Drauna conducted by Tomasai Tukana at the Police Bure of Lautoka Police Station. He was present right throughout the interview and signed the record of interview at the conclusion. Accused was not threatened or forced. He was treated fairly. No complaint was received from the accused after the interview.
54. Under cross examination, witness said that he was instructed to be the witnessing officer whilst he was on his way to the West to do another case. He could not remember when he

arrived at the Lautoka Police Station. His movements and the role he played at the Lautoka Police Station were recorded in the Station Diary of the Lautoka Police Station. Witness was directed by his team leader to put an entry. To his knowledge, station orderly at Lautoka Police Station, wrote it down in the diary.

55. When the Station Diary of the Lautoka Police Station was shown to the witness, he admitted that there was no such entry in the diary and what he said earlier was not true. Witness said that he gave the information to the Orderly who may have forgotten to write it into the diary.
56. Witness was not aware, after the conclusion of caution interview, accused Penaia was in custody. He did not carry a note book and keep records as to what had happened. Accused signed the record at the end of the interview, when a print out was taken. Accused was given lunch.

Evidence of Constable Laisenia Fifita

57. In August of 2014, witness was attached to the Human Trafficking Unit at the Police Head Quarters. He was the interviewing officer for 9th accused Senitiki Nakatasavu's interview. Interview was started at the Namaka Police Station and was concluded in Lautoka Police Station. Witnessing Officer, Const. Josaia Vakaloloma, was present during the interview.
58. The interview was recorded on a Laptop. He could recall that the first part of the interview conducted at the Namaka Police Station was signed but could not recall if the interview that was concluded at the Lautoka Police Station was signed. He was given instruction to come down to Lautoka Police Station to conclude the interview of Nakatasavu and also record a blank statement. Being told that Nakatasavu would not be charged for an offence, by an oversight, he failed to sign the end part of the interview.
59. Witness tendered the record of interview running into 26 pages marked as E8. He said that his signature does not appear in pages 24, 25 and 26.

60. During the interview, accused was informed of the reason why he was being interviewed. Caution was administered to the accused. Sufficient breaks were afforded throughout the interview. After the interview was suspended on the 27th, accused was released to go home. On the 28th of August 2014, when the interview resumed, breaks were afforded to the accused. Interview was suspended at 1615 hrs. and the accused was released to go home. Interview recommenced on the 13th November 2014 at the Crime Office in the Lautoka Police Station. Witnessing Officer was present at the interview which was finally concluded at 2100 hrs.
61. When the interview was concluded, a plain statement of the accused was recorded before releasing him. Accused was not threatened or forced for the purpose of the interview. He was treated well as a colleague. First portion of the interview that was conducted on the 27th and 28th of August, was signed immediately after the interview was concluded.
62. Under Cross-examination, witness said that he was not aware if the accused had given a plain statement before the caution interview commenced. He recorded a plain statement after the caution interview. Before recording the plain statement on the 13th of November 2014, accused was told that the purpose of recording the plain statement was that he will be made a police witness in this case.
63. In the first set of disclosures, 9th accused's record of caution interview had only been signed by the accused. He could not explain why. He recalls signing the original. Witness admitted that he did not sign the record of interview upon conclusion of the interview on the 13th November, 2013 at the Lautoka Police Station.
64. Witness gave a statement to the Police on the 15th of July 2016. In that, witness stated that the accused denied taking part in the assault.
65. Upon his return from overseas, investigating officer gave him the latter portion of the interview to be signed. He refused because he had already signed the disclosure to the accused. That is the reason why this latter portion of the interview was not signed. He agrees that he might have overlooked that part of the interview to be signed.

66. Witness did not tell the accused that he was not obliged to go and take part in the reconstruction. He did not advise accused that he could see a lawyer for advice before going for reconstruction. He cannot recall whether accused signed the record immediately after the interview or sometimes later.
67. Under re-examination, witness said that he didn't inform the accused during the interview that he was going to be a State witness

Evidence of Constable Josaia Vakalala

68. Constable Josaia was the witnessing officer for the caution interview of the 9th Accused Senitiki Nakatasavu.
69. Record of the interview was signed by him and the 9th accused. It was signed soon after the interview was suspended and eventually concluded. Accused was not forced or threatened for the purpose of this interview. He was given all his rights. Accused did not complain of anything at any point in time.
70. In his capacity as the investigation officer, on the directions of the Director Internal Affairs SSP Luke Navela, he kept all the records in the Internal Affairs Station Diary relating to the investigation in respect of the death of Soko. Thursday the 28th of August 2014, entry No. 2 reads that DC. Seruvi called in at Namaka Police to be questioned. Entry No. 2 of the Internal Affairs Station Diary was tendered marked as E9. On the same day, entry No. 7 says SP Manasa Talala called in personally at the Namaka Police Station to be questioned. Entry No. 7 was tendered marked as E10. According to entry No. 9 on the same day, DC Senitiki and PC Filise called in at Namaka Police Station for continuation of the interview and reconstruction. Entry No 9 was tendered marked as Exhibit 11. On the 12th of November 2014, entry No. 5 says that DC. Seruvi and DC Filise called in at the Namaka Police Station. Entry No.5 on the 12th of November was tendered marked as Exhibit 12.
71. Under Cross-examination, the witness said that the Internal Affairs Diary that was kept in Suva was only used during the course of investigation regarding the death of Soko.

72. Witness entered entries based on his personal knowledge whilst being present at the Namaka Police Station. He denied that diary entries were not accurate. Although the diary did not bear an official stamp or a serial number and a certification from a senior officer, entries reflect what transpired at the Namaka Police Station. Witness also denied that the diary was prepared afterwards.
73. Witness admitted that certain pages of the diary were glued together because there was over writing. He denied that SP Manasa Talala, DC Senitiki, PC Filise, DC Kelevi were arrested and brought in for questioning by DC Petero from Internal Affairs Unit. They were merely called in for questioning. DC Petero told him that they came in voluntarily.
74. Witness said that he was present whilst interview of Senitiki being taken and that he signed the record of the interview (E8) soon after the interview. He could not explain as to how his signature and interviewing officer's signatures do not appear on the copy of the record of interview disclosed to the Defence.

Case for Defence

Evidence of Seruvi Caqusau (2nd Accused)

75. Seruvi said that, on the 28th of August 2014, he received a call from a superior officer asking him to come to the Namaka Police Station and was told that if he did not come to the station he will be arrested and locked up in the cell. After a while a Police vehicle driven by DC Sakiusa arrived with DC Tevita. They escorted him to the Namaka Police Station.
76. When he arrived at the Namaka Police Station, he was taken by Inspector Epele Senitiri for the interview. He was under arrest. Interviewing officer did not give the reason for his detention and the interview. Nature of the charges that may be brought against him was not explained. Right to Counsel and Legal Aid were not afforded.
77. The interview was recorded by WSC Mereani. He was not given his constitutional rights before the interview commenced.

78. Sometimes after the interview had commenced, interviewing officer suspended his interview and asked him to go outside. Then he called Filise the 5th Accused and recommenced his interview. Having suspended the interview of Filise's, interviewing officer told him to come inside to continue with his interview.
79. Interviewing officer asked him to agree to what Filise had said in his interview. He refused. Then the interviewing officer asked him to support what Filise had said in his interview so that he could become a State witness. He was warned that if he did not cooperate he will lose his job; will have to vacate the quarters and his family will suffer. Then he agreed to that suggestion and revealed the names. Then he went out and Filise came back in for interview.
80. During the interview, he was taken for reconstruction of the scene with the 5th Accused Filise. Before he was taken to the scene, he was not afforded his rights. Interview resumed after the reconstruction. After the record of interview was printed, he eventually signed the record of caution interview.
81. Witness did not give his caution interview voluntarily. He gave the interview because of the promise and the warning given by the interviewing officer.
82. Prior to 28th of August 2014, he gave a statement to the Police at the Lautoka Police Station (DE1). Epeli and Pate uplifted the document. The fact that he made a statement on the 22nd August, 2014 is recorded in the Internal Affairs Diary.
83. The matters that were recorded on the 28th of August 2014 (in the caution interview) were not recorded in his previous statement. He gave the interview after he was promised that he will be a State witness.
84. Under Cross-examination, witness admitted that DE 1 wasn't a statement taken in the course of the Internal Affairs investigation. He denied that DE1 is a self serving statement made as a part of his attempt to cover up what had happened. He said that the Director of Internal Affairs told him to make the statement.

85. Witness agreed, being a police officer with 28 years of experience dealing with criminals, that he is not a man who can easily be intimidated or pressured. He admitted that the facts that he was promised immunity from prosecution and that he was threatened that he would be thrown out of quarters if he didn't cooperate with the Police investigation were not specifically mentioned in the grounds of *voir dire*. He said that the grounds that the interview was obtained under unfair circumstances and that the statements were obtained in the circumstance that were oppressive covered it.
86. When being asked with reference to *voir dire* ground 4 (The accused person was systematically softened during the interview, in that they were kept in custody in circumstance which was degrading and inhumane) witness said he was detained nearly the whole day for the interview. However, he admitted that his interview started as soon as he arrived at the Station. He was allowed to go home in the evening after the suspension. The promise given to him softened him up. The promise is the inhumane treatment he received.
87. He was not given lunch. He admitted that his Counsel never suggested to the interviewing officer that he hadn't been given his lunch.
88. He admitted having signed the record of interview acknowledging that he was cautioned by the interviewing officer and that he was given his rights.
89. Witness was not afforded his rights when he was arrested by Sakiusa and Tevita. He admitted arresting officer's names was not specifically mentioned in the grounds of *voir dire*.
90. He said that he was escorted in a police vehicle and that tantamount to an arrest. As an experienced police officer, he was aware of the rights to be afforded to an accused on arrest and in custody. He was not given those rights.
91. Record of interview is not an accurate record because the witnessing officer never signed it after the interview. Q59 onwards is not accurate.

92. Filise's answers were used against him when the interviewing officer required him to agree with what Filise had said. Names were fed to him by the interviewing officer and told to support what Filise had said.
93. He said that answer to Q130, that was of exculpatory nature was introduced by the interviewing officer. The only admission in the record of interview was also introduced by the interviewing officer.

Evidence of Filise Vere (5th Accused)

94. Filise said that his interview was started on the 27th of August 2014 at the Namaka Police Station. He received a call from a police officer in Suva and was informed that he was coming to arrest him and take him to Namaka Police Station. He told him not to come he will go on his own.
95. When he arrived at the Namaka Police Station, he was arrested along with DC Senitiki, Constable Kelevi and SP Manasa Talala. He was not given his constitutional rights on his arrest. He was handed over to the interviewing officer IP Epeli. IP Epeli did not afford his constitutional rights before he commenced the interview.
96. At the interview, IP Epeli told him to mention the names of other officers. He refused. Then IP Epeli told him that if he did not mention the names he will be sacked from the Force and that he will not be employed anywhere else and his family will suffer.
97. When the interview was suspended for the day, he was sent home in the afternoon and was told to come back on the following day (28th of August 2014) and, if not, they will come and arrest him.
98. He saw 2nd accused Seruvi in the police station on the 28th. Seruvi went into the crime office to be cautioned interviewed by IP Epeli. Then they suspended Seruvi's interview and recommenced his interview.

99. He was eventually taken for the reconstruction with Seruvi in the same vehicle. Before going for reconstruction, he was not given his rights. After the conclusion of the interview he signed the record of interview in the presence of the interviewing officer and the witnessing officer.
100. Caution interview was given involuntary. Interviewing officer suspended Seruvi's interview and commenced his interview and told him to cooperate with Seruvi's interview. They also told not to worry about anything because he will be a State witness. Then he agreed to this suggestion.
101. Under Cross-examination, witness said that he came to the police station by bus in the morning. Petero arrested four officers including himself at the police station soon after his arrival. He did not come voluntarily. He was shocked after receiving the threatening phone call from an unknown police officer.
102. Witness agreed that the record of interview that he signed is an accurate record. He also agreed that he was afforded all his rights before IP Epeli asked him any questions about allegations. He mentioned everything in the interview because of the threat held out to him. Witness said that he was threatened with termination from service. He was promised that he will be a State witness. Witness agreed that he would have had chicken stew for lunch.
103. Interviewing officer told him to make admissions to putting chillies on arrested person's body including his anus. Witness believed that he will not be prosecuted if he admitted the allegation. However, he was not given a written assurance.

He admitted that what Seruvi had stated in his interview is not reflected in his interview.

Evidence of Kelevi Sewatu (3rd Accused)

104. Kelevi said that, on the 27th of August 2014, DC Petero and driver Sakiusa came and arrested him when he was at home. He was taken to the Namaka Police Station. Upon arrest, he was not given rights under the Constitution.

105. Before the interview, he was not afforded his constitutional rights. Interviewing officer and witnessing officer threatened him and verbally informed, “when you are going to be cautioned interviewed you have to admit to the allegation because the whole evidence is with us”. They informed him that if he did not admit, they will lock him inside the cell until the day he is charged.
106. When the interview was going on, they threatened him. They said that they had the whole evidence and if he did not admit the allegation, he will be sacked. They referred to police officer Semi’s statement which had implicated him.
107. Before going for reconstruction, he was not given his rights. In the afternoon of 27th August, they suspended the interview and released him from custody. He was informed to come back on the next day. If he didn’t come, they will come home and arrest, they warned.
108. On the 28th he came back to the Police Station. He was not afforded his rights when the interview resumed. They referred to, DC Semi and DC Jona’s statements. He was under duress. He did not even know the people he mentioned in his caution interview. They were forcing him to give those names.
109. Upon conclusion of the interview, they released him from custody. He did not sign the interview. While he was waiting for transport, they came to pick him up after 2 hours and took him again to the Namaka Police Station for him to sign the caution interview. When he signed the caution interview, interviewing officer or witnessing officer was not present.
110. He was provided meals on the 27th and 28th of August. Interview was not voluntarily given.
111. Witness said under cross-examination that Petero and Sakiusa came and arrested him. He admitted that it was never suggested to Petero when he was in the witness box that he was arrested by Petero. Witness denied the suggestion that he was never arrested at home.

112. He was not afforded his rights during the interview. He went home on the 27th after the interview was suspended. But he never complained about the threats because he was not in a proper state of mind. He was also shy to go out to report because his name was in the news.
113. Witness was threatened and was under duress. Still he denied any involvement in assaulting Soko.

Penaia Drauna (4th Accused)

114. Penaia's interview was conducted on 7th of December 2014 at the Lautoka Police Station. Corporal Tomasi Tukana and Pati came and arrested him at home. He was not afforded his constitutional rights upon arrest.
115. Corporal Tomasi Tukani interviewed him. He was not given his Constitutional rights before the commencement of the interview.
116. During the interview, the interviewing officer Corporal Tukana, gave him some names to be put in the caution interview. He told him to cooperate with them and threatened that he will be sacked from the force if he did not. He was not given lunch despite his request.
117. At the conclusion of the interview, he signed the record. The interviewing officer and SSP Semisi Bokadi assured him that he will be a State witness and released him from custody.
118. He gave a plane statement on 25th August 2014. Internal affairs diary bears testimony to that.
119. Under Cross-Examination, witness admitted that he did remain silent on his way to the Station. He agreed that he was given his constitutional rights during the interview. No rights were given to him before the interview and during the arrest.

120. His interview is a complete fabrication by police. Interview which was conducted in Fijian was recorded in English. He was not given an opportunity to read the record of interview. He just signed upon the completion.
121. Answer to question 25 was fed by the interviewing officer. Even exculpatory answers were fabricated by the interviewing officer.

Evidence of Senitiki Nakatasavu (9th Accused)

122. On the 27th of August 2014, Senitiki was arrested at home by Cpl. Petero and was taken to Namaka Police Station in a police vehicle driven by DC Sakiusa. He was not afforded his constitutional rights on his arrest.
123. DC Laisenia Fifita commenced the interview. Before the commencement of the interview, he was not given his constitutional rights. His mind was not in a good state during the interview. He was questioned regarding a statement.
124. In the afternoon, he was released from police custody and warned to come back again on the following day to resume the interview. Interviewing officer promised that he will be a State witness. Before leaving for reconstruction, he was not given his rights.
125. On 27th of August, when the interview was suspended, he did not sign the record. He eventually signed the record on the 28th around 9 pm., at the Cassava Patch, 5 hours after his release. He was drunk at that time. Interview officer or witnessing officer was not present. On the 28th when the interview resumed, he was not given his rights.
126. Prior to giving this caution interview, he gave a plain statement to the police on the 22nd of August 2014. He recorded himself it voluntarily.
127. Another plain statement was recorded by Cpl. Laisenia on the 13th November, 2014 before the interview resumed. Witness was promised that he will be a State witness when the plain statement was recorded.
128. Caution interview was given involuntary. His mind was not in a good state and the names were introduced by the interweaver.

129. Under Cross-examination, witness said that he was approached by the Internal Affairs Unit for the first time for the purpose of the interview.
130. He admitted that, during the interview, he was afforded his constitutional rights. He also admitted that it was never suggested to the interviewing officer or the witnessing officer that the caution interview was signed in the Cassava Patch.
131. He admitted that names said to be fed by the interviewing officer belonged to officers serving with him in the Force. He also admitted that he didn't incriminate himself.

Analysis

132. Before delving into evidence in relation to each witness separately, I make following general observations from above testimonies.
133. Accused persons are challenging the admissibility of their caution interviews on the basis of the *voir dire* grounds filed on 3rd July, 2015. During the course of the inquiry, the scope and ambit of the grounds was substantially expanded by the Defence both through questions put to the Prosecution witnesses and by evidence adduced by accused persons. For example, the contention that some of the accused persons were induced to make statements by way of a promise that they will be made State witnesses is never reflected in the grounds of *voir dire*. If the accused persons had in fact briefed the Defence Counsel about this allegation at the outset, it can reasonably be expected that this specific allegation to be reflected in the grounds of *voir dire*. Specific allegations belatedly made during the course of *voir dire* proceedings no doubt affect the credibility of the Defence version.
134. Accused persons are experienced police officers. Although they are deemed in all respects to be suspects in relation to their caution interviews, the fact that they are specialists in the field of criminal investigations; the fact that they are possessed of special knowledge so far as Constitutional Rights of suspects and Judges Rules are concerned cannot be ignored in coming to a decision in this case.

135. The Defence challenged the credibility of witnesses called by the Prosecution on the basis that they gave evidence by virtue of their memory instead of perusing note books that they were supposed to use to refresh their memory. Prosecution witnesses conceded that they had failed to make notes in their note books.
136. The sequence of events that took place during respective interviews is recorded in caution interviews in black and white. It is true that note books properly maintained would have helped the police witnesses to refresh their memory in regards to events that took place prior to and after the interviews. It is my considered view that, in the circumstances of this case, the failure on the part of police officers to maintain note books does not vitiate the evidence.
137. In evaluating evidence of Prosecution witnesses, this Court took into consideration the fact that their evidence was substantially based upon respective records of interviews signed by the accused themselves. It is not the contention of the Defence that the signatures of the accused were forged. The stance taken by some accused persons that their interview records had been fabricated by police is never consistent with their grounds of *voir dire*. Therefore, the records of interviews can be taken into consideration to test the credibility of witnesses.
138. Furthermore, the officers involved in the interviewing process belong to the same Fiji Police Force to which accused persons also belonged. No doubt, this case would have been a special case down their memory lane. The incident took place in August 2014 and the time space between the incident and their evidence is not substantial so as to sufficiently impair the memory of a witness.
139. Defence challenged the evidence of Prosecution on the basis that some of the copies of interview records had not been signed either by the witnessing officer or the interviewing officer when they were first disclosed to the Defence. They argued that the records of interviews had been signed afterwards and not at the time of the interviews.

140. The original records of interviews tendered in evidence by the Prosecution carried the signatures of both the interviewing officer and the witnessing officer. Except in respect of one record of interview, Prosecution witnesses maintained that, upon conclusion of respective interviews, interview records were signed then and there. The fact that some of the copies disclosed to the Defence do not bear the signatures does not give rise to the only inference that interview records had been signed afterwards or interviews had never been witnessed by a witnessing officer.
141. When perusing caution interviews, it is revealed that accused persons had effectively denied or minimized their involvement in the alleged incident. Instead of incriminating themselves, they had incriminated others. This behavior of the accused suggests that they had enjoyed a greater degree of freedom at their respective interviews.
142. Before going for the reconstruction of the crime scene, the interviewing officers had failed to inform the accused persons that they were not obliged to go to the reconstruction site. They had also not afforded the Right to a Counsel at that stage. Reconstruction of the crime scene had taken place in the process of the caution interview. Accused persons had been cautioned and their rights had been afforded at the interviews, well before the reconstruction. Therefore, no prejudice had been caused to the accused persons.
143. Accused persons are members of the Fiji Police Force. It is hardly believable that they were denied meals, oppressed or treated inhumanely by their own colleagues before and during the interviews.
144. With these general observations in mind, I now turn to examine evidence in respect of each accused.

1st Accused Manasa Talala

145. Officers Kushi Ram and Suliano Tevita gave evidence in respect of the caution interview of the 1st accused. I find the evidence of both witnesses to be credible and consistent. Defence Counsel did not challenge their evidence that the accused was afforded his Constitutional Rights during the interview or before questions were put to him. Main

contention of the Defence is that accused was arrested and, from the point of arrest to the commencement of the interview, he was not afforded his Constitutional Rights.

146. Prosecution witnesses conceded that accused was not afforded his Constitutional Rights before the interview commenced. However, they maintained that, before putting any questions, accused was properly afforded his rights under the Constitution. They also maintained that accused was never under arrest during the interview.
147. Accused was a senior police officer in the rank of a Superintendent. He did not come to the witness box to deny that he was not under arrest during the interview. That is his right and the burden is always on the Prosecution to prove that accused was under arrest and his rights were given.
148. Prosecution mainly relied on documentary evidence to prove that accused was under arrest during the interview. Entry 58 (dated 27th August 2014) of the Namaka Police Station Diary says that SP Manasa, along with 5th and 9th accused were 'brought in for questioning by DC Petero from Internal Affairs'. Defence argued that the entry meant that accused was arrested and brought in. Plain meaning of the phrase does not suggest that accused was 'arrested and brought in'.
149. Interviewing officer Kushi Ram said, under cross-examination, that Director, Internal Affairs called SP Manasa and informed him to be present at the police station. Witnessing officer Tevita said that SP Manasa was present at the Namaka Police Station on the instructions of Divisional Commander. Defence also relied on an entry in the Prisoners Meal Book (PMB) and argued that meals had been ordered for SP Manasa on the basis that he was a detainee. I am unable to agree with that contention. The fact that meals had been ordered for SP Manasa through the PMB does give rise to the conclusion that he was under arrest. PMB would have been the only book available at the police station to order a meal for a person under interrogation. If this entry was not put in the PMB, police officers would not have been able to prove that meals were provided.

150. The strongest point that persuaded me to consider SP Manasa to be a person who was never under arrest is that he was allowed to go home on the 27th August, 2014 after the suspension of the interview. It is hardly believable that a person under arrest could simply walk home without any entry being put in that regard either in the Namaka Station Diary or Internal Affairs Diary.
151. Having considered all the evidence, I have come to the conclusion that SP Manasa was never under arrest during the interview.
152. Since I have come to the conclusion that SP Manasa was never under arrest, he was not entitled to Constitutional Rights afforded to a suspect under arrest. Even assuming that he was denied his rights upon his arrest, the decision of this Court whether to exclude his caution interview will depend on whether or not the denial of his rights upon arrest had prejudiced the accused during the interview.
153. Prosecution does not deny that accused was not afforded his rights before the commencement of the interview. However, the interviewing officer maintained that accused was afforded his constitutional rights before questions being put to the accused. Accused had acknowledged in his cautioned interview that he was cautioned and afforded other Constitutional Rights. Therefore, no prejudice had been caused to the accused at the interview.
154. Defence says that unfair practices were used by the interviewing officer to elicit answers from the accused in that he was cross examined and the cross examination was based on statements of other accused/witnesses. Interviewing officer maintained that this practice was followed in accordance with the training he had received.
155. English authorities cited by the Defence Counsel show that reading a statement of another accused (when they are charged separately for the same offence) in order to elicit a confession or admission would be reprehensible. [Gardner and Hancox Criminal Appeal Reports (Herman Cohen) (Vol.xvi) pages 265-270, Alfred Pilley Criminal Appeal Reports (Herman Cohen) (Vol.xvi) pages 138-139].

156. I perused the record of interview carefully. The police have not obtained an admission or confession from the 1st accused using the statements of other accused/witness. Therefore, no prejudice had been caused to the accused.
157. Before going for reconstruction, the interviewing officer had failed to inform the accused that he was not obliged to go to the reconstruction site. He had also not afforded the Right to Counsel at that stage. Reconstruction of the crime scene had taken place in the process of the caution interview. Accused had been cautioned and his rights had been afforded at the interview before the reconstruction. Therefore, no prejudice had been caused to the accused.
158. Accused had been given sufficient breaks to rest, and meals had been provided. He had been freed on suspension and conclusion of the interview.
159. I am satisfied that the interview of the 1st accused had been conducted fairly. He had been afforded his constitutional rights. Judge's Rules had been observed. There is no evidence of 'softening up' or oppression. He had been treated well by his own colleagues.

2nd Accused Seruvi Caqusau

160. Both Seruvi and the 5th accused Filise were interviewed by D/IP Epeli Senitiri. W/S/SGT Mereani had been the witnessing officer for both interviews. Both of them gave evidence. I find the evidence of both witnesses to be credible and consistent.
161. Defence Counsel did not challenge their evidence that the accused was afforded his Constitutional Rights during the interview or before questions were put to him. Interviewing officer agreed that he did not afford accused his Constitutional Rights before the commencement of the interview. However, he maintained that, before putting any questions, accused was properly afforded his rights under the Constitution.
162. 2nd accused said that he was arrested at home. Under cross examination, he described the act of being escorted to the police station in a police vehicle as an arrest. He admitted that he was allowed to go home after the suspension and completion of the interview. It is

hardly believable that a person under arrest could simply walk home without any entry being put in that regard either in the Station Diary or Internal Affairs Diary. I believe the evidence of the Prosecution that Seruvi was not under arrest.

163. Main contention of the Defence is that accused was threatened and given a promise by the interviewing officer to elicit a confession or admission. Both interviewing and witnessing officers denied the allegation. Interviewing officer admitted that Seruvi's interview had to be started before the completion of Filise's interview. He also admitted that both the accused were taken together for reconstruction. He explained why he had to resort to such actions. There is no evidence to suggest that two interviews had been prearranged to elicit a confession from the accused.
164. Accused says that the content of the interview was given as a result of the promise given by the interviewing officer that he would be made a State witness if he supported what Filise said. On the other hand, Filise said that he was threatened and given a promise that he would be made a State witness if he supported what Seruvi said.
165. Interviewing officer emphasized that he had no authority or power to make such a promise. Being a police officer with experience, accused should have known, in the absence a written sanction from the relevant authority, that the interviewing officer was incapable of making such a promise or that he was giving a bogus promise. Accused conceded that he is a man who cannot be easily intimidated or pressured. I am unable to comprehend how a police officer of his caliber could be persuaded to make a confessionary statement which entails serious consequences. I perused the caution interviews of both accused to see whether a statement of one accused had been used against the other. I am unable to find any evidence to suggest that an admission had been made by Seruvi to support the version of Filise.
166. To support the version that a promise was given, accused highlighted the disparity between the plain statement he made on the 22nd of August, 2014 and his caution interview. Seruvi admitted that the plain statement was made outside the Internal Affairs

investigation. The Prosecution submitted that the plain statement is a self-serving statement which was recorded in an attempt to cover up what had had happened.

167. If the Seruvi had in fact been given a promise, this specific allegation should have been reflected in the grounds of *voir dire*. There is no such specific *voir dire* ground to that effect.
168. There is no credible evidence before this Court to find that Seruvi was threatened or given a promise. Seruvi is an experienced police officer. If he was threatened he could have made a complaint to a higher authority when he was freed after the suspension and completion of the interview. Accused had not made a complaint to anybody. The fact that caution interview was largely exculpatory leads to the conclusion that it was made voluntarily.
169. There is no evidence that Seruvi was treated unfairly or inhumanly. He had been given breaks. Both caution interview and the meal book show that he had been given lunch. Seruvi's version that he was denied lunch was never put to the interviewing officer by his Counsel.
170. I am satisfied that the interview of the 2nd accused had been conducted fairly. He had been afforded his constitutional rights. Judge's Rules had been observed. There is no evidence of 'softening up' or oppression.

3rd Accused Kelevi Sewatu

171. I am not satisfied that Kelevi's interview was conducted fairly. Kelevi said that interviewing officer and witnessing officer threatened him and verbally informed: "*when you are going to be cautioned interviewed you have to admit to the allegation because the whole evidence is with us*". They had informed Kelevi that if he did not admit, they will lock him inside the cell until the day he is charged. When the interview was going on, they threatened him. They said that they had the whole evidence and if he did not admit the allegation, he will be sacked.

172. Evidence of Kelevi that he was under duress to admit the allegation is supported by the record of caution interview. He had been referred by the interviewing officer to statements made by other accused namely, DC Semi and DC Jona and asked questions on the basis of those statements. Kelevi had made an admission in response to question 81 which was based on DC Semi's statement. Question No.86 was based on DC Jona's statement. Accused had made an admission in response to that. In light of the evidence of Kelevi that he was under duress when he was informed at the outset that "*when you are going to be caution interviewed you have to admit to the allegation because the whole evidence is with us*", I am of the view that the answers had been obtained by the interviewing officer using an unfair practice. I am not satisfied that the caution interview of the 3rd accused was given voluntarily.

4th Accused Penaia Drauna

173. I find the evidence of the interviewing officer and witnessing officer to be credible and believable. Defence Counsel questioned the interviewing officer Tukana on the basis that the names appear in question 22 were supplied by him. Tukana denied the allegation. I can't see why the names of those officers serving in his own Unit should be fed by the interviewing officer.
174. Penaia confirmed that his interview was conducted on the 7th December, 2014 at the Lautoka Police Station. Penia's versions that his interview was fabricated by police and that it was conducted in Fijian and then translated into English were never put to the interviewing officer by his Counsel. I can't see why the interviewing officer would want to fabricate even exculpatory answers.
175. Penaia's evidence that he was promised that he will be made a State witness is unbelievable. The answers he had given are exculpatory.
176. There is no evidence that Penaia was treated unfairly or inhumanly. He had been given breaks. Both caution interview and the meal book show that he had been given lunch.

177. I am satisfied that the interview of the 4th accused had been conducted fairly. He has been afforded his constitutional rights. Judge's Rules had been observed. There is no evidence of 'softening up' or oppression.

5th Accused Filise Vera

178. I find the evidence of both prosecution witnesses to be credible and consistent.

179. Defence Counsel did not challenge their evidence that the accused was afforded his constitutional rights during the interview or before questions were put to him. Interviewing officer maintained that, before putting any questions, accused was properly afforded his rights under the Constitution. Filise himself admitted that he was afforded his rights during the interview.

180. Filise had come to the police station by bus. He admitted that he was allowed to go home after the suspension and completion of the interview. His evidence that he was arrested at the police station is not believable. It is hardly possible that a person under arrest could simply walk home without any entry being put in that regard either in the Station Diary or Internal Affairs Diary.

181. Main contention of the Defence is that interviewing officer threatened the accused and gave him a promise in order to elicit a confession or admission. Both interviewing and witnessing officers denied the allegation. Interviewing officer admitted that Seruvi's interview had to be started before the completion of Filise's interview. He also admitted that both the accused were taken together for reconstruction. He explained why he had to resort to such actions. There is no evidence to suggest that the interviews had been arranged as part of a police scheme to elicit a confession from the accused.

182. Accused says that the content of the interview was given as a result of the promise given by the interviewing officer that he would be made a State witness if he supported what Seruvi said. On the other hand, Seruvi said that he was threatened and given a promise that he would be made a State witness.

183. Interviewing officer said that he had no authority or power to make such a promise. Being a police officer with experience, accused should have known, in the absence a written sanction from the relevant authority, that the interviewing officer was incapable of making such a promise or that he was giving a bogus promise. I am unable to comprehend how a police officer of his caliber could be persuaded to make a confessionary statement which entails serious consequences. I perused the caution interviews of both 2nd and 5th accused to see whether a statement of one accused had been used against the other. I am unable to find any evidence to show that an admission had been made by Filise to support the version of Seruvi.
184. If the accused had in fact been given a promise or inducement, this specific allegation should have been reflected in the grounds of *voir dire*. There is no such specific *voir dire* ground.
185. There is no credible evidence before this Court to find that Filise was threatened or given a promise. Accused is an experienced police officer. If he was threatened he could have made a complaint to a higher authority when he was freed after the interview. Accused had not made a complaint to anybody.
186. There is no evidence that accused was treated unfairly or inhumanly. He had been given sufficient breaks. Both caution interview and the meal book show that he had been given lunch.
187. I am satisfied that interview of the 5th accused had been conducted fairly. He had been afforded his constitutional rights. Judge's Rules had been observed. There is no evidence of 'softening up' or oppression.

Senitiki Nakatasavu

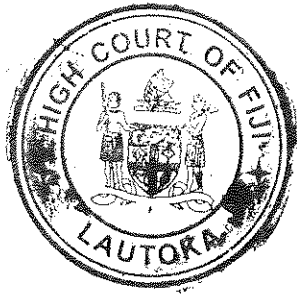
188. I find the evidence of the interviewing officer and the witnessing officer to be plausible.
189. Defence took up the position that the accessed was given a promise that he would be made a State witness. Interviewing officer admitted that such a promise was given only after the interview was concluded on the 28th August, 2014. However, there is no

evidence that a confession or admission had been obtained as a result of a promise. Senitiki himself admitted that he did not give a statement incriminating himself.

190. The version of the accused that his signature was obtained at the Cassava Patch was never put to the interviewing officer by his Counsel. There is no evidence that interview on the 27th and 28th August, 2104 was conducted unfairly.
191. Interviewing officer, however, admitted that latter part of the interview that was conducted on the 13th November 2014 at the Lautoka Police Station was not signed. He had received instructions from his superior that Senitiki would not be charged. On that basis, a plane statement had also been recorded before the conclusion of the interview. In view of the evidence of the interviewing officer, it cannot be said that the caution interview held on the 13th November, 2014 was voluntary.

Conclusion

192. I am satisfied that the caution interviews of the 1st, 2nd, 4th, 5th and the first part of the caution interview of the 9th accused held at the Namaka police Station on 27th and 28th of August 2014 were voluntarily given. I am not satisfied that the caution interview of the 3rd accused and the caution interview of the 9th accused held on the 13th November 2014 had been given voluntarily. Therefore, I hold that the caution interviews of the 1st, 2nd, 4th, 5th and the first part of the caution interview of the 9th accused held at the Namaka Police Station on 27th and 28th of August 2014 to be admissible in evidence. I hold that the caution interview of the 3rd accused and the caution interview of the 9th accused held on the 13th November 2014 to be inadmissible in evidence



Aruna Aluthge
Judge

At Lautoka
07th October, 2016

Solicitors: Office of the Director of Public Prosecution for State
Office of Legal Aid for Accused