

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 176 OF 2008S

STATE

vs

RICHARD RONIL KUMAR
s/o RICHARD SURUJ KUMAR

Counsels : Ms. S. Hamza and Mr. K. Waqavonovono for the State
Mr. T. Terere for the Accused
Hearings : 19th, 20th and 21st April, 2010
Ruling : 22nd April, 2010

RULING ON TRIAL WITHIN A TRIAL

1. The accused has challenged the admissibility of the statements he gave the police in his caution interview, on 8th August 2007, and in his charge statements, dated 14th May 2008. His grounds were that he was assaulted and threatened by the police, at the time, to give those statements.
2. It is well settled that, the test for admitting into evidence, a statement given by an accused person to the police, is that the statement must be given voluntarily, by the accused to the police. In other words, the accused must give those statements to the police, out of his own free will. Evidence that the accused has been assaulted, threatened or unfairly induced into giving those statements, will negate free will,

and will result in the statements being ruled inadmissible. The burden of proving that the accused gave his statements voluntarily lies on the prosecution, throughout the "trial within a trial". The standard of proof is that of proof beyond a reasonable doubt: State vs Mohammed Harun Khan, Criminal Case No. HAC 009 of 2004, High Court, Labasa.

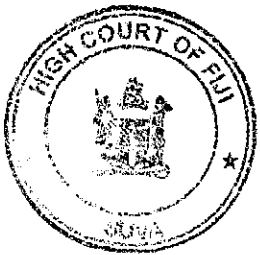
3. In this case, the prosecution called 11 witnesses – all police officers. The defence called one witness, that is, the accused's himself. On 8th August 2007, at about 6.30am, the accused said, he was awoken at his home, when three policemen visited his home. They took his small brother and himself to the Navua Police Station. He said, one of the policeman slapped him on the head, prior to leaving for Navua Police Station. At Navua Police Station, he was locked in the cell, at 7.30am. He said, he was locked there for 3 hours. He said, the police asked him why he hit his brother. He told the police, he hit his brother because he was not listening to his mother. He said, he was charged and released to go home.

4. However, according to the accused, he was re-arrested by police, and taken to Navua Police Station after 2pm, on 8th August 2007. At the Station, the accused was questioned on an allegation that he raped his younger sister, Priya Agnes Kumar. He said, he repeatedly denied the allegation to the police. He said, the police later threatened him that they will do to him what they did to a suspect in Valelevu. He said, a policeman came and pulled the back of his neck. Another policeman, he said, slapped his cheek. He said, the police took him to the crime office, and questioned him.

5. The accused said, the police repeatedly question him on whether or not he raped his sister, Priya Agnes Kumar. He said, he denied the allegations against him. He said, Umesh then hit his head with his knuckles. He said, as a result, he admitted the allegation against him. He said, he was in police custody for 3 days, and then released.

6. The accused said, he was formally charged on 14th May 2008 – approximately 9 months later. He said, the police told him to sign the charge statement, and they will take him to court. He said, he was taken to court the next day. He said, he appeared at the Suva Magistrates Court. He denied the charges, and pleaded not guilty to them. He said, he made no complaints to the Magistrate on police assaults or threats, while in police custody. He said, he found no reason to see a doctor after being caution interviewed in August 2007, or being formally charged in May 2008.
7. PW1, SC 3111 Tomasi, arrested the accused on 8th August 2007, at 5pm at Navua Post Office. He took him to Navua Police Station and handed him over to WPC 3003 Katarina. PW2, Inspector Josaia, said he instructed PW1 to arrest the accused. He said, he also witnessed the accused being formally charged on 14th May 2008. PW3, WPC 3003 Katarina, served meals on the accused on 8th August 2007. PW4, PC 2800 Patrick, said he searched and locked the accused in the cell on 8th August 2007 at 2317 hours. PW5, SC 2778 Neomi said, he checked the accused in the cell on 8th August 2007. PW6, PC 3140 Mohammed said, he served meals on the accused on 9th August 2007. PW7, SC 2677 said, he served breakfast to the accused on 10th August 2007. PW8, WPC Berata said, accused was released and left with his mother after his caution interview on 10th August 2007. All the above police officers said they did not assault or threatened the accused, nor did the accused make any complains to them of any assaults or threats.
8. PW9, Inspt. Pradeep Kumar said, he witnessed the accused's caution interview on 8th, 9th and 10th August 2007. PW10, D Cpl. 561 Umesh said, he caution interviewed the accused on 8th, 9th and 10th August 2007. Both PW9 and PW10 said, they did not assault, threaten or made promises to the accused before, during and after the interview. They said, they saw no one assault, threaten or made promises to the accused before, during and after the caution interview. PW11, WPC 2764 Litia said, she formally charged the accused on 14th May 2008. She said, she did not assault, threaten or made promises to the accused, nor saw anyone assault, threaten or made promises to the accused before, during and after the charging.

9. I have carefully considered the prosecution's and defence's evidence. In my view, the accused voluntarily gave his statements to the police when he was caution interviewed on 8th, 9th and 10th August 2007, and when formally charged on 14th May 2008. He gave those statements out of his own free will. There was no oppression or duress done by the police on the accused, at the time. The accused's statements in his caution and charge statements are therefore declared admissible evidence. It's acceptance or otherwise, will be for the assessors to decide, at the trial proper.



AT Suva

22nd April, 2010

A handwritten signature in black ink, appearing to be "Salesi Temo".

Salesi Temo

ACTING JUDGE