

police officer Gus Billings, together with some other police officers, obtained the confession through assault and intimidation tactics.

03. The test for the admissibility of statement made by an accused to person in authority is whether it was voluntary, obtained without oppression or unfairness or in breach of any Constitutional Rights now Common Law rights. The burden proving voluntariness, fairness, lack of oppression and observance of common law rights rests on the prosecution and all matters must be proved beyond reasonable doubt.
04. Evidence of assault and threats of violence, if accepted by the court, are sufficient to raise a reasonable doubt as to voluntariness. If what the accused says is true, it would create an oppressive climate of fear.

The Law

05. The principles governing the admissibility of an admission or a confession are well settled. A confession or an admission made by an accused to a person in authority could not be properly given in evidence unless it was shown that it was made voluntarily, that is, not obtained through violence, fear or prejudice, oppression, threats and promises or other inducements (**Ibrahim v R** {1914} AC 59). Even if such voluntariness is established, the trial court has discretion to exclude a confession or an admission on the ground of unfairness (**R v Sang** [1980] AC 402). A further ground that an admission or a confession could be excluded is for breaches of constitutional rights.
06. Oppression is anything that undermines or weakens the exercise of free will (**R v Prestly** [1965] 51 Cr. App. R). The onus of proving voluntariness, fairness and lack of oppression is on the prosecution and they must prove these matters beyond a reasonable doubt. If there has been a breach of any of the accused's constitutional rights,

the prosecution must prove beyond a reasonable doubt that the accused was not thereby prejudiced.

The Prosecution case

07. At the Voire Dire inquiry Prosecution called ten (04) witnesses.
08. According to PC 2927 Gus Billings, he had received a report of a rape incident on 14/09/2012 from Vunikoka settlement. He inquired the incident and arrested the accused on the same day. At that time accused did not make any complaint to the witness. When he was taken to police station complainant was in the charge room. Hence accused was kept in the Crime Office for about five minutes. No police officers came to Crime Office while accused was kept there. Only WPC Maria Fane came twice to the crime Office. Accused was not assaulted, threatened or intimidated at that time.
09. On 15/09/2012 he had received instructions to interview the accused. He had the verbal interview as the accused informed that he was feeling cold the verbal interview was terminated. He identified the accused in open court. The entries which he made to Station Diary are marked as exhibit No.01.
10. In the cross examination he denied that he assaulted and threatened the accused while he was in his custody. He admitted that he later came to know that the accused was taken to hospital on 14/09/2012 and sustained a fracture on his ribs. He admitted that the accused made a complaint against him on 14/09/2012.
11. In the re examination witness denied assaulting the accused on 14/09/2012.

12. DC 3556 Kesi Ratavo had recorded the Caution Interview Statement of the accused on 16/09/2012 on the instructions of Station Officer Tomasi. He commenced the interview at the charge room of Savusavu police station. Investigating Officer WPC Maria Fane was present during recording of the interview. Accused did not make any complaint. All rights were given and the interview recorded in Fijian Language. At the end of the interview the accused and the witness placed their signatures. The original Caution Interview Statement was marked as Exhibit No: 2A. It typed version was marked as Exhibit No: 2B and English version was marked as 2C. He identified the accused in open court.
13. In the cross examination witness said that he did not explained the right of medical treatment or right to remain silence. Further witness failed to ask his educational qualifications. Witness was not aware that the accused had a fracture on his ribs. Further he had not taken any endeavour to take the accused to doctor before recording his interview. He denied any assault by police officers.
14. In the re examination witness said the accused was normal when he recorded the interview.
15. DC 3521 Saiyasi had recorded the Charge Statement of the accused on 17/09/2012. Charge was taken in the Crime Office of Savusavu Police Station. All the rights were given to the accused and he looked normal. Charge was taken in Fijian language. He and the accused signed the Charge Statement. Charge Statement was marked as Exhibit No: 3A and its translation was marked as 3B.
16. In the cross examination witness admitted that the date of recording of the Charge Statement was wrongly entered in the Charge Statement. He was not aware of taking the accused to Savusavu Hospital on 16/09/2012 of complaint of chest pain.

17. WPC 4567 Maria Fane the investigating officer of this case had gone to victim's house after receiving the report on 14/09/2012. She brought the victim and her father and mother to the police station. PC Gus Billing too came with her. She had recorded the statements of the witnesses and compiled the docket. After the arrest of the accused by PC Gus Billings she had seen the accused twice in the crime office. At that time PC Gus Billing was standing outside of the crime office. She identified the accused in open court. As the original cell book went missing she marked the photocopy as Exhibit No: 4.
18. She was aware that the accused was taken to Savusavu Hospital for 4 times. When the accused was brought to the police station there was no marks of violence on his body.
19. After closing the prosecution case defence was called and the accused gave evidence and called a witness.

Defence Case

20. Accused in his evidence said that he is a carpenter by profession and worked for Ram Constructions in the year 2012. In the month of September 2012 he was based in Queen Victoria School. One day he was taken to Savusavu Police Station by PC Gus Billings. At the police he was put into a room and assaulted by PC Gus billings. First he was punched on his face twice and then five times on his stomach. As a result he fell down. Thereafter the same police officer kicked is chest several times. Finally he kicked on his mouth. As a result a front tooth was fallen off. He showed the missing tooth in open court. Another tooth was removed by the doctor.

21. The assault was lasted for about 20 minutes. At that time investigating officer Maria Fane came to the room warned PC Gus Billings not to injure anybody inside the police station. While he was in the police station blood was oozing from his mouth. A police officer took him to Savusavu Hospital around 9.00pm. A doctor examined him and he told the doctor how he sustained the injuries. After seen the injuries doctor told him that he has a rib fracture. A belt was put around his ribs and some medicine prescribed. Police Officer was advised to bring him for an x-ray on the following day. He was not taken to hospital as directed by the doctor. Accused is still wearing the belt.
22. He was taken to hospital four times. He was interviewed on 16/09/2012 while he was injured. Before the interview PC Gus Billing took him back to the Police and forced him to admit the charge. At that time he was shivering with his broken ribs. He was charged on the following day. Due to force and intimidations by PC Gus Billings and WPC Maria Fane he admitted the rape charge. Due to assault now he cannot breathe properly and lift anything heavily.
23. In the cross examination he told that WPC Maria came to the room when he was bleeding. He was taken to hospital in the night of 14/09/2012 and he told the doctor that he has chest pain. Witness admitted that as per the entries in Station Diary PC Gus Billings was not in the police station when assault took place. Witness said that he never admitted nor placed his signature voluntarily as he was forced and intimidated by the police to do so.
24. Dr. Kusitino Tiko gave evidence on behalf of the defence. He had seen the accused on 16/09/2012. He had observed that the accused was suffering with pain on his chest. Further he had noticed unstable front lower tooth with some trauma around it. Minor bruises have seen on his right side of the face. As per his observation the injuries

sustained were not longer than a week. He prescribed treatment and medicines. According to doctor these injuries could have been caused by blunt force applied to the chest and direct blunt force to the mouth. Police officer was directed to bring the accused for an x-ray on the following day but he was brought only on 19/09/2012. X-ray revealed a fracture on his ribs.

25. On 20/09/2012 accused was produced before him by A/Sgt Lalit Vikash with a Medical Report. This was marked as D1. All observations and findings are entered in the Medical Report. According to his professional opinion chest trauma could be due to strong force on the wall of chest and trauma to teeth could be due to blunt force.
26. In the cross examination witness said that all examination reports are in Savusavu Hospital. On 14/09/2012 accused was examined by Dr. Neelam. Witness reiterated that he saw the accused with discomfort and pain on his chest and discomfort in his mouth. According to witness the trauma to the chest and mouth are not self inflicted.
27. When the caution interview was recorded WPC Maria was present in that room. No explanation given as to her presence. She is the investigating officer in this case. She has even not placed her signature as a witnessing officer. Hence it is clear that another officer was present while accused caution interview statement was being recorded.
28. The accused sustained very serious injuries while he was under the custody of police officers. He has been taken to Savusavu Hospital for four times. At the very first time he had complained chest pain to the doctor who examined him on 14/09/2012. Thereafter he had been taken thrice to the hospital including the date of recording his caution interview statement (16/09/2012). The doctor who examined the

accused rest of the three days confirmed that accused sustained a rib fracture and a trauma to his mouth which resulted losing one of his teeth.

29. It is very clear with the evidence presented to this court that the accused in this case sustained injuries while in the custody of police officers.
30. The evidence of the police witnesses for the prosecution, as shown above, was unsatisfactory and tainted with contradictions.
31. I, therefore, rule out the admissibility of the alleged Caution Interview Statement of the accused marked as Exhibit-2A and the Charge Statement marked as 3A on the ground of involuntariness. Its admission in evidence will affect the fairness of the proceedings. Accordingly, I reject the Caution Interview Statement and Charge Statement of the accused as being irrelevant.

P. Kumararatnam
JUDGE

At Labasa
2nd August 2013

