

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case Number: HAC 48 of 2011

BETWEEN : **THE STATE**

AND : **PURATAKE TAPOGE**
KITIONE VESIKULA
FILOMENE ULUIVITI

BEFORE : **HON. MR. JUSTICE PAUL MADIGAN**

Counsel : Mr. M. Mataiva for State
All accused in person

Date of hearing : 31 July, 1 August 2013
Date of Ruling : 1 August 2013

RULING

[1] The State seeks to adduce into evidence the record of a cautioned interview with the first accused ("the accused") made at Taveuni Police Station on the 30th November 2011. The accused objects to the admissibility of this document on the grounds of assault and threats before the interview was conducted.

[2] The test in assessing whether an interview is admissible in evidence is whether it was made voluntarily or not, obtained without oppression or unfairness and not obtained in breach of the suspect's Constitutional (now read Common Law) rights. The burden of proving that the statement was obtained voluntarily, without oppression or unfairness and in accordance with common law rights is on the

Prosecution and that burden remains on the State throughout. The standard is of course beyond reasonable doubt. I have kept these tests and the burden uppermost in my mind in deciding on this application by the State.

- [3] Evidence of assault should I find it proved, amounts to an attack on the voluntariness of the statement in that assaults would sap the will of the accused, and render his participation as unwilling.
- [4] The unrepresented accused submits that he was assaulted by two police officers (one of whom he was able to name as Mosese) at Matei Police Post in the morning of the first day of his interview on the 30th July 2011. He says that he was taken into a room where he was made to do push-ups at which time he was kicked, he was punched and slapped, and attempts were made to poke his eyeballs, all of which put him in great fear. He submits that because of these assaults his will was sapped and he confessed to participation in a crime and he would not have done so, were he not in such fear.
- [5] The Court in conducting the voir dire hearing into the conduct of the interview was ever mindful of the fact that the accused was unrepresented and not as well equipped to deal with the intricacies and significance of the evidence in these matters and took pains to assist the accused to conduct his voir dire as if he were represented.
- [6] The State in its quest to prove the interview voluntary called three Police witnesses to give evidence.
- [7] PW1 was D/Cpl. 2059, Oliva Tagivetaua. He was the officer who interviewed the accused on the 30th July 2013. He gave evidence that the interview proceeded satisfactorily with no complaint from the accused and with no improprieties extended towards him.

- [8] PW2 was the Witnessing Officer who gave evidence of a similar nature. While I believed the evidence of these two officers neither of them were present at Matei Police Post where the abuse complained of by the accused was claimed to have occurred. To that extent their evidence was not really helpful to this enquiry.
- [9] PW3 was Inspector Mosese Tokailagi, who was at the time the Station Officer at Taveuni Police Station. At the time the first report was made of this homicide, he was in Labasa and he was notified of the case by telephone. Learning that there were three suspects, he ordered that they be kept separate, to "keep them safe from the relatives of the deceased". The accused was kept at Matei Police Post, which happened to be his area of responsibility and on returning to Taveuni from Labasa he happened to be at Matei at the same time as the accused to "check the Post and its Officers." He never saw anybody assault the accused nor did he see anyone try to poke his eyes. He only spoke to the accused through the bars of his cell and was never with him in any other room.
- [10] The accused gave sworn evidence in the voir dire. He said that when he and his two co-accused were taken into custody, his co-accused were taken to Taveuni Police Station at Waiyevo and he was taken to Matei Police Post. He arrived there one evening at 9pm and spent the next day sleeping. In the morning of the following day "Mosese" and his driver arrived. Mosese took him out of the cell into a room, told him to admit and then told him to do push-ups and his chest was kicked. Mosese punched him, slapped him and made as if to gouge his eyes out. He was in a lot of pain. He was taken back to Waiyevo (Taveuni Police Station) where he was interviewed under caution that afternoon. He was afraid during the interview and that is why he told the Police about using the wood.

- [11] In cross-examination the accused admitted that he had never complained to anybody, including the Magistrate, about these assaults until this hearing.
- [12] To find the record of interview admissible, I have to be satisfied beyond reasonable doubt that first, the answers provided by the accused were provided voluntarily and secondly that there was no oppression occasioned to him in the obtaining of those answers.
- [13] I find that in applying the requisite tests I cannot be satisfied of either of these matters.
- [14] The evidence of PW3 was evasive and unconvincing. He was clearly embarrassed when asked to explain the reasons for his presence at Matei Police Post with the accused on the morning of the 30th November, 2011. His claim that Matei was under his jurisdiction and he had to be there that morning to "check the post and the officers present" was in the circumstances, implausible and weak. His evidence that he did speak to the accused but through the bars of his cell, saying "good morning" and "how are you?" is almost farcical.
- [15] The evidence of the accused was consistent and was given candidly without exaggeration. I do not have to find that his evidence is true but I find that it **might** be and to that extent I cannot be sure that the Prosecution has proved beyond reasonable doubt that the interview was not made in a climate of fear.
- [16] In addition, the interview was suspended from 6.30pm on the 30th November until 2pm on the 31st November. On resumption of the interview, the accused was cross-examined by the interviewing officer on matters that had obviously been gleaned from witnesses to the incident. There were relentless questions about the actions and weapons used by him and by others, including his wife. Such

questioning was unnecessary and oppressive. An interview under caution should be no more than an attempt to explore the actions and intentions of the accused alone without cross-examination and without questions on the activities of others.

[17] I find that the record of interview is involuntary and oppressive and as such it is inadmissible and may not be used in evidence on the general issue.

Paul K. Madigan
JUDGE

At Labasa
1 August 2013