

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 152 OF 2010

STATE

-v-

NAVEEN SINGH

Counsel : **Mr S Babitu for State**
Mr Kumar for Accused

Date of Hearing : **02 September 2013**

Date of Ruling : **03 September 2013**

Voir Dire Ruling

1. The State seeks to adduce into evidence the records of a caution interview of the accused on 22.11.2010 and the charging statement of the accused on 23.11.2010. The accused objects to the admissibility of both these documents on the grounds that those statements were obtained after assaults, threats and oppression.
2. The test of admissibility of all confessional statements made to the Police officers is whether they were 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 Section 27 of 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. The preamble of the Judges Rules states as follows:

“That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.”

4. The Privy Council, In the case of *Wong Kam-ming v The Queen (1980) A.C. 247, P.C.*, observed that:

“[t]he basic control over the admissibility of statements are found in the evidential rule that an admission must be voluntary i.e. not obtained through violence, fear or prejudice, oppression, threats and promises or other improper inducements. See decision of Lord Sumner in Ibrahim v R (1914-15) AER 874 at 877. It is to the evidence that the court must turn for an answer to the voluntariness of the confessions.”

5. The Fiji Court of Appeal in case of the *Ganga Ram and Shiu Charan v R (FCA Crim. App. 46/1983)* outlined the two-part test for the exclusion of confessions at page 8:

“It will be remembered that there are two matters each of which requires consideration in this area.

First, it must be established affirmatively by the crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as use of force, threats or prejudice or inducement by offer of some advantage-what has been picturesquely described as ‘flatter of hope or the tyranny of fear.’ Ibrahim v R (1914) A.C. 559; DPP v Pin Lin (1976) A.C. 574.

Secondly, even if such voluntariness is established, there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sanag (1980) A.C. 402, 436CE). This is a

matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account.”

6. It is for me to decide whether each of the two interviews was conducted freely and not as a result of threats, assaults or inducements made to the accused by a person or persons in authority. Secondly if I find that there has been oppression or unfairness, then I can in my discretion exclude the interviews. Finally, if his rights under the Constitution or common law have been breached, then that will lead to exclusion of the confessions obtained thereby, unless the prosecution can show that the suspect was not thereby prejudiced. These rights include such rights as having a legal representative of his choice and having access to family, next-of-kin or religious counselor.
7. The burden of proving voluntariness, fairness, lack of oppression, compliance with common law rights, where applicable, and if there is non compliance, lack of prejudice to the accused rests at all times with the prosecution. They must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
8. Now I look at the evidence presented in respect of each interview.
9. The accused was arrested on 21.11.2010 by DC 3952 Senitiki. Giving evidence he stated that the accused cooperate in the arrest and was taken to Lautoka Police station. In cross examination he denied assaulting the accused on the way to the charge room. He further denied smacking the ears of the accused with his hands, punching the accused on the lips or pulling down the pants of the accused. He also denied putting the accused on ground and pulling his legs towards his head. He denied trying to burn the penis of the accused with a lighter.
10. WPC Irene Singh had conducted the caution interview on 22.11.2010. It was conducted in English language. The accused was given his rights. He was not assaulted, threatened or intimidated before, during or after the interview. There was no complaint from the accused. There were no visible injuries on the accused. She identified the original notes of the interview and the accused.
11. When cross examined she denied assaulting the accused on his head with a wooden ruler. She denied seeing the accused limping. Further she denied other officers assaulting the accused during the interview.
12. The witnessing officer of the caution interview, Ana Nai was the next witness for the prosecution. She corroborated the evidence of WPC Irene Singh. In cross examination she denied seeing any injury on the accused or that he is limping. She further denied any assault by other officers during the interview.

13. DC 2867 Mohamed Harif who conducted the charging interview of the accused on 23.11.2012 was called next. According to him the accused made a voluntary statement. He was not assaulted, threatened or intimidated to do so by him or any other Police officer. He denied threatening the accused that he will be beaten if he does not sign the statement.
14. DC Apenisa who released the accused on 23.11.2010 from the cell and the Investigating officer WDC 3692 Asenaca also gave evidence on behalf of the prosecution.
15. After the close of the prosecution case, I found a case to answer from the accused in the trial within a trial.
16. The accused gave evidence. His position was that he was arrested on 21.11.2010. When he was reading the Bible after coming home from church, he was arrested. He was put to a room and was assaulted by several officers on his head, chest and ears. He was asked to put his penis on a table and Police officer had assaulted the penis with an Iron rod. Another officer had brought a large scissors and told him that he is going to cut his penis. He grabbed a chair and prevented that. When he was put into cell the Police officer had told the other prisoners that he had raped someone. He was assaulted by three prisoners in the cell. After assault he could not walk.
17. The following day his caution interview commenced. WPC Irene had assaulted him with a wooden ruler while interviewing him. Police officers have tried to put a ruler to his back. Another Police officer had tried to burn his penis with a lighter. His penis got burnt from that. He had signed the caution interview as WDC and Irene had told him to do so. He was explained what he signed.
18. In cross examination by the prosecution he said that his penis was not beaten with an Iron rod. The Police officers have told him that it will be done. But he was kicked on the penis once. He further said that PW 1 did not arrest him. Although he was assaulted by several persons in Police custody he did not have any visible injuries. He further admitted he never went to doctor to take treatment.
19. I have carefully considered the available evidence in respect of the caution interview on 22.11.2010 of the accused.
20. Accordingly, I have come to the view that in regard to any allegation of assault by the police, the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the accused that he was assaulted before and during this caution interview. I am satisfied that the interview was voluntary, that it was obtained in fair circumstances,

that it was in no way oppressed or beaten out of the accused in contravention of his rights either under the Judges' Rules or of the Constitution which was not in operation.

21. The caution interview of the accused on 22.11.2010, being voluntary made and not created out of oppression is therefore admissible in evidence.
22. I have carefully considered the available evidence in respect of the charging statement on 23.11.2010 of the accused.
23. Accordingly I have come to the view that in regard to any allegation of assault by the police, the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the accused that he was threatened before signing this charging interview. I am satisfied that the interview was voluntary, that it was obtained in fair circumstances, that it was in no way oppressed or beaten out of the accused in contravention of his rights either under the Judges' Rules or of the Constitution which was not in operation.
24. The charging statement of the accused on 23.11.2010, being voluntary made and not created out of oppression is therefore admissible in evidence.

Sudharshana De Silva
JUDGE

At Lautoka
03rd September 2013

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