

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 059/2011**

**BETWEEN:**

**THE STATE**

**AND:**

**ISIKELI TAMANI**

**COUNSEL:**

**Mr J Niudamu and Ms R Uce for the State  
Mr I Ramanu for the Accused**

**Date of Hearing:**

**19-23/09/2013**

**Date of Ruling:**

**24/09/2013**

**Written Reasons:**

**04/10/2013**

## **VOIRE DIRE RULING**

[1] The accused objects to the admissibility of a caution interview made between 07-08 January 2010 at the Anti Money Laundering and Proceeds of Crimes Unit at the Criminal Investigation Department Head Quarters, on the basis that it was not voluntarily made but induced by threats and promises. The oral grounds on which he initially challenged the admissibility are:

1. That his record of interview was unsigned but the copy was signed on a later date.
2. That the interviewing officer failed to seriously consider the accused's medical condition during the interview proper.

[2] The test for the admissibility of statements made by an accused to person in authority is whether they were voluntary, obtained without oppression or unfairness or in breach of any constitutional rights. The burden proving

voluntariness, fairness, lack of oppression and observance of constitutional rights rests on the prosecution and all matters must be proved beyond reasonable doubt.

- [3] Evidence of threats of violence, if accepted by the court, is 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**

- [4] 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.
- [5] 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.
- [6] At the Voire Dire inquiry Prosecution called five witnesses.
- [7] The accused was caution interviewed by D/IP Aiyaz. He commenced the caution interview on 07/01/2010 and concluded on 08/01/2010. On the first day DC/Vilitati Bari had witnessed the recording. On the second day DC/Nilesh Kumar was present as witnessing officer. The interview was recorded through personal computer in front of the accused and the witnessing officer. On both days accused looked very well. All the rights were given to the accused. Considering his medical condition sufficient breaks and meals were provided at appropriate time. Although accused had spinal injury but was not under medication.

- [8] On both days interview was recorded in the personal computer and at end of every page accused was given a chance to read, delete and alter before placing his left thumbprint in him caution interview statement.
- [9] In the interview room, only the accused was present together with the interviewing officer and the witnessing officer. No one else was present in the room. A small boy who was in the CID building assisted him to go the washroom or elsewhere. All the movements of the accused in the CID Head Quarters on the 7<sup>th</sup> and 8<sup>th</sup> January 2010 were properly recorded in the Station Diary which had been marked as P2. Caution Interview Statement was marked as P1.
- [10] On the 11/11/2010 the accused was charged by A/IP Rajesh Kumar at the Anti Money Laundering Unit, in CID Head Quarters, Suva. It took about 20 minutes. The charge was recorded using a personal computer. Accused was given all the rights before he was being charged. This was witnessed by DC/Waisiki Baleilevuka.
- [11] In cross examination accused admitted that the police provided necessary assistance during the interview and while he was at Totogo Police Station.
- [12] Accused gave evidence and called two witnesses. According to him though he was interviewed on 7<sup>th</sup> and 8<sup>th</sup> January 2010, his thumbprint was not taken on both days. It was taken on 11/11/2010 the day of charging. He was not given a copy of the interview after charges were laid. But he admits that his rights were read out to him by the interviewing officer.
- [13] Defence witness Taione Bale who assisted the accused on 7<sup>th</sup> and 8<sup>th</sup> January 2010 at CID Head Quarters said that he never saw accused's thumbprints taken at any time.
- [14] Second defence witness Apenisa Lino was the accused's helper on 11/11/2010 at the CID Head Quarters. According to him after charging the accused his thumbprints were taken to his caution interview statement before he was taken to the court.
- [15] The accused's main contention is that his thumb prints were not taken to his caution interview statement on 7<sup>th</sup> and 8<sup>th</sup> of January 2010. Hence he submits that his caution interview statement was fabricated by the police.
- [16] According to prosecution he was properly caution interviewed on 7<sup>th</sup> and 8<sup>th</sup> January 2010 and charged on 11/11/2010. The accused was charged after

receiving the analyst report from Australia. Further accused was never forced to make a statement by the police. Accused admitted that his rights were given to him before recording his interview. At all the time no outsiders were present during the recording of interview and the charge statement of the accused.

- [17] Having heard the evidence by prosecution and the defence, I accept the evidence of the police officers that the accused's caution interview statement and charge statement were recorded fairly, without any intimidation or fabrication.
- [18] I am satisfied that the prosecution has proved beyond reasonable doubt that the accused made the Caution Interview Statement and the charge statement voluntarily. I have considered the demeanour of all the witnesses who testified before me.
- [19] I find the Caution Interview Statement to be admissible in evidence.

P Kumararatnam  
**JUDGE**

At Suva  
04/10/2013

