

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 32 OF 2013

STATE

-v-

PENAIA RATU

Counsel : **Mr Singh for State**
 Ms M Tarai for Accused

Date of Hearing : **15 November 2013**
Date of Ruling : **19 November 2013**

VOIR DIRE RULING

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 13.2.2013. The accused objects to the admissibility of this document on the grounds that this statement was obtained after assaults, threats and oppression.
2. The test of admissibility of all confessional statement made to the Police officer, is whether that was 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 previous Constitution have been breached, this will lead to the exclusion of the confession 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 thetyranny 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 over bearing 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 interview 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 interview. Finally, if his rights under the Constitution or common law have been breached, then that will lead to exclusion of the confession 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 noncompliance, 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 the caution interview.
9. The accused was arrested on 13.2.2013 at the Tavua bus stand by group of police officers led by PC Iveri. Other officers in the group were Cpl. Kini, PC Jese and PC Akariva who was the driver of the police vehicle. PC Kini gave evidence first. He stated that they left the station at 2.55 p.m. and reached the bus stand within 3 minutes. The accused was seated between two ladies. When he saw the police vehicle he was trying to hide. PC Jese had gone and brought him to the vehicle. The accused was seated in the back seat of the twin cab. There was an old small cut just above his lip. He was taken to the Tavua police station at 3.03 p.m. He was handed over to the station orderly. The accused was informed why he was arrested. The accused was not assaulted, threatened or forced during the arrest. The accused did not make a complaint.
10. Under cross examination he admitted that PC Akariva is the father of the complainant. He admitted that civilian boy went with them in the police vehicle. He denied PC Iveri as the person who went and arrested the accused. He further denied punching the accused on the way to the police station. He further denied swearing at the accused. He denied being present at the time of caution interview and assaulting and threatening the accused.
11. The next witness for the prosecution was PC Iveri. He gave a similar version to PC Kini regarding the arrest of the accused. He had helped PC Jese to put the accused into the vehicle.
12. Under cross examination he denied going to bus stand and grabbing the accused by collar and dragging him to the vehicle. He denied assaulting or swearing at accused in the vehicle on the way to the police station. He also denied being present at the time of the caution interview.
13. The next witness was PC Akariva who was the driver of the vehicle. He gave similar version to above witnesses regarding the arrest. Under cross examination he admitted that he is the father of the victim. He further admitted he felt angry and he had a personal interest that affected his duties that day. But he said he was not angry enough to assault the accused. He denied slapping the accused.
14. PC Jese Marovia was called as the next witness by the prosecution. He had given a similar version regarding the arrest of the accused. When he went to the accused, he had stood up and walked towards the village. He picked his bag and put it in the vehicle. When he was

about to pass the vehicle he had seen PC Iveri. He held the accused's hand and led him to the vehicle. No force was used. Accused had an old small cut on the lip. He was not assaulted on the way to the station. At the station accused was handed over to the crime officer.

15. He was also the witnessing officer of the caution interview of the accused on 13.2.2013. He said that accused was calm and okay. The accused was given his rights. No threat or assault was made to the accused. He identified the original caution interview notes which were produced as marked PE 1. A reconstruction was done at the house of the complainant. No threat or assault was made there.
16. Under cross examination he denied assaulting the accused during the interview. He also denied that PC Iveri and PC Kini were present during the interview. He further denied that accused was assaulted in the vehicle after arrest on the way to police station. It was suggested that accused admitted offence only after he was told that he will be locked up in the cell and will beat him up. It was denied by the witness.
17. The next witness for the prosecution was PC Waisea Narema. He was the station orderly on 13.2.2013. He had reported to work at 0700 hours and finished duty at 1530 hours. He had made entries about officers leaving to arrest the accused, coming back with the accused and the observations on the accused. The accused had an old small cut on his upper lip.
18. Under cross examination he said five officers have left to arrest the accused. He identified the T-shirt shown by the defence counsel as the one worn by the accused on that day. He could not recall whether there were any blood stains in the T-shirt. He said when accused was brought, blood was not dripping onto his T-shirt.
19. The last witness for the prosecution was Simone Ratu. He is police officer with 26 years experience. On 13.2.2013 he had received instructions from crime officer to caution interview the accused. PC Jese was assisting as witnessing officer. It was done at the crime office Tavua police station. It commenced at 4.45 p.m. and concluded at 7.55 p.m. The accused was calm and normal. He had an old small injury on lip. The interview was conducted in I-taukei language in question and answer format. He had prepared an English translation which was tendered marked PE 2. A reconstruction was done after interview was suspended at 6.45 p.m. At the scene accused was cautioned. They have returned back at 7.05 p.m. and the interview continued. The accused was not assaulted, threatened or forced. The accused did not make a complaint after the interview.

20. Under cross examination he stated that the accused was given a break at the time of the reconstruction. He denied that PC Iveri and PC Kini were present during the interview. He further denied accused being assaulted or sworn at by PC Iveri, PC Kini and PC Jese. He admitted that he had recorded 6.55 p.m. as the time of conclusion of the interview in the original. However he said it was wrong writing and should be 7.55 p.m. He denied that everything in the interview was recorded before he went for the reconstruction.
21. With that evidence prosecution closed their case in the voir dire inquiry. As there was a case to answer by the accused in the trial within trial, defence was called and his rights were explained.
22. The accused gave evidence. His position was that he was arrested at the Tavua bus stand when he was with his aunt to go to Suva. When he was put into the police vehicle at about 3.00 p.m. PC Kini and PC Jese punched him on the side of ribs while PC Iveri and PC Akariva slapped him. When he was taken to the station PC Jese had punched him and directed him to sit. All his belongings were taken and he was put in the cell. He was bleeding from a really deep cut on his lower lip. His parents came to visit him.
23. He was interviewed by Simone Ratu. Police officers Iveri, Jese and Kini were present and Iveri talked to him in Tavua dialect and told him that if he don't admit the allegation he will be locked up in a cell and punched. Then he said yes to the allegations. Jese was slapping him and the other two were punching him during the interview. He said that he was bleeding from the lip till he was taken to the reconstruction. Jese was pointing places during the reconstruction and threatening him. He further said interview was not read over to him and up to now he had only read the first two pages of the interview.
24. He had handed over the T-shirt worn by him with blood stains to his parents when they visited him on 13.2.2013. This T-shirt was produced in court. There were two, three stains in this T-shirt. He said that these are blood marks. He was taken to Tavua Magistrates court on 15.2.2013. At that time the injury was swollen. He did not request Magistrate for a medical examination. He had not made a complaint about this up to now as he is afraid of police officers.
25. Under cross examination he admitted that duration of travel from bus stand to the police station is less than five minutes. He could not recall how many punches or slaps he received. He had used his face towel to wipe the blood coming from the injury. That too was handed over to the parents same night. When he was remanded he had not complained about this injury. He admitted that he did not make a complaint to the Magistrate or the High court Judge about his injury.

26. He admitted signing the caution interview. However he said after question 30 it is fabricated by police.
27. Accused called his mother as the next witness. She said that accused was at a funeral and came home to go to Suva at about 3.00 p.m. He was clean and healthy at that time. When she saw him again at the police station about 4.00 p.m. he had a cut on his lip and blood stains on his T-shirt. That injury was bleeding. His eyes were swollen. She had spoken to police officer Iveri. He had told her that accused admitted as police assaulted him.
28. In the night she had given change and taken the T-shirt which was not washed. She said accused did not give a face towel at the same time.
29. Under cross examination she said that although she saw the injury she did not make a complaint or requested a medical examination. According to her son, he had told her that he was assaulted in the police vehicle.
30. I have carefully considered the available evidence in respect of the caution interview on 13.2.2013 of the accused.
31. 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.
32. The caution interview of the accused on 13.2.2013, being voluntary made and not created out of oppression is therefore admissible in evidence.

Sudharshana De Silva
JUDGE

At Lautoka
19th November 2013

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