

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 72 OF 2013

STATE

-v-

VILIAME TUBUYA

Counsels : Mr A. Datt for the State
Ms S. Nasedra for the Accused

Date of hearing : 31st March 2014
Date of Ruling : 01st April 2014

VOIR DIRE RULING

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 3.4.2013 and charge statement dated 3.4.2013. The accused objects to the admissibility of this document on the following grounds:
 - (i) That his confessions were obtained involuntarily through pressure, duress and force by the police at the Ba police station
 - (ii) That on 3.4.2013 he was arrested and taken to the Ba police station
 - (iii) That he was threatened by two male police officers that he will be beaten up if he did not admit to the allegations put to him
 - (iv) That he was interviewed on 3.4.2013 in iTaukei language. When he did not admit to the allegations put to him, he was hit twice on his back with an iron rod by an iTaukei police officer
 - (v) That whenever he did not admit to the allegation that was put to him, he was threatened that he would be struck with the iron rod.

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 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 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 interviews were 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 the caution interview and charge statement.
9. The first witness was PC M. Shamim. He had arrested the suspect on 2.4.2013 at his house. The suspect was informed the allegation against him. The suspect cooperated with the arrest. The suspect was allowed to change his clothes on his request. He was taken to the Ba police station, searched and locked in the cell. Under cross examination he said he could not recall the time of arrest but it was dark.
10. Next witness was WDC Miriama Nadumu. She is an officer with 10 years experience. She had assisted in the arrest of the suspect. On the following day the suspect was caution interviewed by her in the crime office of the Ba police station. It was commenced at 8.20 a.m. and concluded at 6.44 p.m. The suspect was given rests during the interview. It was done in question and answer format in iTaukei language. There was no threat, promise. The suspect was not assaulted at any time. After the interview the suspect had signed and she counter signed.
11. Under cross examination she admitted that the accused is an old person and he had education only to primary level. She denied that accused did not understand what was put to him due to his education level. The accused wanted her to read back the interview at the conclusion. She denied not writing the answers given by the accused. She admitted that soon after the caution interview, charge took place. She denied that charging officer was

present during the last part of the interview and threatened the accused that if he does not admit he will be treated like an animal.

12. The next witness was DC Tomasi Nakeke. He had charged the accused on 3.4.2013 after the caution interview. It was at the crime office in Ba police station. It was in iTaukei language. The accused was normal and did not make a complaint. He did not make promises, threats or inducements. The accused was not assaulted. The accused made a statement voluntarily. He had translated the same and given it to the investigation officer.
13. Under cross examination he admitted that the accused is old and he had education only to primary level. He denied that answers in the charge statement are not answers given by the accused. He further denied threatening the accused that he will be treated like an animal if he does not admit the allegations. He denied being present at the time of the caution interview.
14. The last witness for the prosecution was wife of the accused. She had gone to Ba police station on 3.4.2013 to take money from him. She had talked to him in the presence of a police officer. Accused had not made any complaint to her. In cross examination she said that she only talked about money. She denied not talking to him.
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 2.4.2013. He was taken to Ba police station. When he was interviewed by Miriama, Nakeke was present. During the interview he had denied the allegations. He was assaulted. He was told by Nakeke that if he does not admit he will be treated like an animal. He was afraid and he admitted. This was told twice. His wife came to collect money from him before the interview. He had not talked with the wife.
17. Under cross examination he admitted that he did not make a complaint to the Magistrate or to the High Court Judge later. He admitted that there was no threat or assault apart from telling that he will be treated as an animal. He further admitted by the time this threat was made most of his caution interview was concluded. He said that he was never assaulted with an iron rod during the interview. He admitted that he instructed his lawyer regarding voir-dire grounds. In re-examination he stated the first time he told anyone about threat was when his counsel visited him in remand.
18. I have carefully considered the available evidence in respect of the caution interview and the charge statement on 3.4.2013 of the accused.

19. Accordingly, I have come to the view that in regard to any allegation of threats 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 during his 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.
20. The caution interview of the accused and the charge statement of 3.4.2013, being voluntary made and not created out of oppression is therefore admissible in evidence.

Sudharshana De Silva
JUDGE

At Lautoka
01st April 2014

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