

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

CRIMINAL CASE NO: HAC 042/2012

BETWEEN : THE STATE

AND : DEVENDRA NAIKER

COUNSEL : Mr R Prakash and Ms R Uce for the State  
Mr T Ravuniwa for the Accused

Dates of Hearing : 27-31/03/2014 and 01-02/04/2014

Date of Ruling : 02/04/2014

Written Reasons : 11/04/2014

**VOIRE DIRE RULING**

[01] The accused objects to the admissibility of his Caution Interview made between 21-23/12/ 2011 at the Crime Branch at Nausori Police Station, 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 he was punched by the police officers around his head and ears.
2. That the police officers rubbed chilli to his penis and beat the soles of his feet with a police baton.
3. That the police officers forced him to run in front of a speeding police vehicle during the reconstruction of the scene.

4. That the police officers punched the left side of his ribs and pulled on his right operated shoulder which had a torn ligament which caused him bleeding.
5. That the police officers rubbed chilli to the bleeding cut on his operated shoulder.

[02] The test for the admissibility of statements made by an accused to a 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.

[03] 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

[04] 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.

[05] 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.

- [06] At the Voire Dire inquiry Prosecution called five witnesses.
- [07] Hari Karan is a Justice of Peace. He was called to Nausori Police Station on 23/12/2011 to speak and enquire from the accused of his health condition and welfare whilst he was in police custody. He said there were no complaints from the accused against the police. Also said that the accused told him he was looked after very well by the police.
- [08] The accused was caution interviewed by DC/Nikalesh Chand. He commenced the caution interview on 21/12/2011 and concluded on 23/12/2011. The interview was witnessed by DC/Avinesh Maharaj. During the interview the accused looked very well. All the rights were given to the accused. Sufficient breaks and meals were provided at appropriate time. At the end of every page accused was given a chance to read, delete and alter before placing his signature to his caution interview statement.
- [09] 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. All the movements of the accused during recording of his caution interview were properly recorded in the Station Diary. Caution Interview Statement was marked as P1.
- [10] Witnessing officer DC/Avinesh Maharaj corroborated the evidence of interviewing officer. He admitted that he is also known as "Pundit". He denied that he assaulted the accused at any time while he was in police custody.
- [11] DC/Arvin Singh is the investigating officer in this case. He denied assaulting the accused while he was in police custody. He only assisted the interviewing officer by providing statements of witnesses. He was never present while the interview was being recorded.
- [12] On the 23/12/2011 the accused was charged by PC/Pramendra Singh at the Nausori Police Station. Accused was charged about 20 minutes after conclusion of the caution interview. Accused was given all the rights before he was being charged. He was never threatened or intimidated to admit the charge. This was witnessed by PC/Ramendra. The charge statement was marked as P2.



- [13] Two doctors gave evidence for the prosecution.
- [14] According to Dr. Ilisapeci Lasaro, as per the history the injury in the accused's fingers was not sustained while in police custody.
- [15] Dr. Upendra Singh had examined the accused on 24/12/2011 as part of routine check up. The accused was normal when he was produced before him. There was mild rib cage tenderness on the accused and muscle strain on the accused's left thigh. The doctor was not sure whether the rib cage tenderness was due to a punch on the chest. But his explanation in detail said, that tenderness noted could be due to any small impact, any old injury or even born pain. (Arthritis)
- [16] Accused gave evidence from witness box and called two witnesses. According to the accused, he was in police custody from 21/12/2011 to 26/12/2011. He was subjected to severe police assault while he was in police custody. He was punched on his head, ears and left side of his ribs. He was threatened not to tell doctors about the assault. He also threatened that he would be taken to Army Barracks where he would face more assault. He admitted that he did not inform police assault to the Learned Magistrate when he was produced in court.
- [17] Defence witness Pastor Ronald Ram confirmed that the accused's father Ashok Naicker informed him that his son was assaulted by police officers.
- [18] Ashok Naicker father of the accused confirmed that when he met his son at the police station he told him that police officers assaulted him severely. But he has not taken any endeavour to inform this court or higher ranking police officers up to now.
- [19] According to prosecution the accused was properly caution interviewed between 21-23/11/2011 and charged on 23/12/2011. Further accused was never forced to make a statement by the police. His rights were given to him before recording his interview. He was not assaulted, intimidated or forced during recording of caution interview statement. At all the time no outsiders were present during the recording of interview and the charge statement of the accused. The accused never complained to anybody about the police assault.

A mild tenderness noted on accused's chest. According to the doctor this could be due to muscular pain.

- [20] Having heard of the evidence by the 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 assault.
- [21] 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.
- [22] I find the Caution Interview Statement to be admissible in evidence.



A handwritten signature in blue ink, appearing to read "P Kumararatnam".

P Kumararatnam  
JUDGE

At Suva  
11/04/2014