

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

**CRIMINAL CASE NO.: HAC 119 OF 2013**

STATE

-v-

JONE VASIGA

**Counsels** : Mr. Alvin Singh the State  
Ms. Jiuta for the Accused in person

**Date of hearing** : 09 May 2014

**Date of Ruling** : 12 May 2014

## **Voir Dire Ruling**

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 12.6.2013 and the charge statement. The accused objects to the admissibility of this document on the grounds that this statement was obtained involuntarily through pressure, intimidation and threats by the police.
2. The test of admissibility of all confessional statement made to the Police officers, 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 confessions. 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 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 interview. 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 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 and charge statement.
9. The first witness was DC Jone Vakasa. He is an officer with 13 years experience. On 11.6.2013 he has received instructions to assist PC Maika to attend to a report. They have gone to Masimasi. There were group of people sitting down and discussing with the victim and mother. They were taken to the Sabeto police station to record statements. The suspect was arrested at his house in Nadele and brought to the station. Suspect was informed the reasons for the arrest. The suspect had co-operated with the arrest. He was brought to the station around 10.30 p.m. and handed over to the station orderly.
10. Under cross examination, he said that the victim and the suspect were not taken together to the station.
11. The next witness was PC Jesoni Naisoro. He is an officer with experience of 10 years. On 12.6.2013 he had received instructions to caution interview the suspect. It was conducted in iTaukei language. He had translated the same to English. PC Sakeasi was the witnessing officer. The suspect had not made any complaint. The suspect appeared normal. There were no visible signs of injury. The interview was commenced at 10.35 a.m. and concluded at 4.20 p.m. It was in question and answer format. He had kept a record of the interview. The suspect was given his rights. The suspect was not assaulted or threatened. No inducement or promise was made to him. The suspect gave answers voluntarily on his own freewill. At the conclusion it was read back to him. He was given opportunity to add, alter or delete. The record was signed by the suspect. He had counter signed the same. He identified and tendered the original interview notes marked VD1 and translation marked VD2. He identified the suspect in court.
12. Under cross examination he said that he was not present at the time the suspect was brought into the station. He denied telling suspect 'you better admit the allegation or I will beat you up.'

13. The next witness for the prosecution was DC Sakeasi Turagabeci. He is an officer with 18 years experience. On 12.6.2013 he had received instructions to be the witnessing officer of the caution interview of the suspect. All the rights were given to the suspect. Two breaks were given to the suspect. There was no threat, inducement or promise. The suspect appeared calm. The suspect did not make any complaint. The suspect was not hand cuffed during the interview. He identified the accused. The suspect was taken for a reconstruction. The suspect was not threatened, promised or induced there.
14. Under cross examination, he denied the suspect was threatened by interviewing officer by words 'you better admit the allegation or I will beat you up.'
15. The next witness was DC Semi Cakaunibula. He is an officer with 14 years experience. On 12.6.2013 he had received instructions to charge the suspect. He had cautioned the suspect. The charge was in iTaukei language. A translation was made by him to English. PC Sakeasi was present as the witnessing officer. The suspect had not made any complaint. He had not made any promise or inducement. The suspect had made a statement in the charge. The suspect had signed it. He had counter signed. He identified and tendered the charge statement marked VD3 and translation marked VD4. He identified the suspect in court.
16. Under cross examination, he denied being present at the time of the caution interview or threatening the suspect that he will beat him up if he changes the story.
17. The last witness for the prosecution was PC Sakaraia Salavi. He is in police force for 24 years. On 11.6.2013 he was the station orderly. The suspect was brought to the Sabeto station around 23.00 hrs -23.30hrs. He had searched and locked the suspect in the cell. The suspect was in good condition. He had checked the suspect twice in the cell that night. The suspect was sleeping. He had made entries in the station diary.
18. Under cross examination, he denied that the suspect was kept hand cuffed to a wall in the reception area whole night.
19. After the close of the prosecution case, I found a case to answer from the accused in the trial within a trial. The accused was explained his rights.
20. The accused gave evidence. His position was that he went to Masimasi on 11.6.2013 after work looking for his wife around 7.00 p.m. He was taken to Sabeto police station by three police officers. He was kept seated on a bench with his right hand handcuffed to a wall till next morning. At the interview he was told 'if you don't admit to this allegation we will punch you up.' He was threatened once in midday.

21. Under cross examination, he admitted that he did not make a complaint to the police, Magistrate or the Judge about the threat made to him. He said there were no injuries or bruises from being handcuffed to a wall whole night. He admitted that he was explained his rights and he understood the same. He admitted that he answered the questions put to him in iTaukei language voluntarily. He also admitted that he gave a statement in the charge and no one threatened him to make that statement.
22. I have carefully considered the available evidence in respect of the caution interview and charge interview on 12.6.2013 of the accused.
23. Accordingly, I have come to the view that in regard to threat made to the accused and handcuffing the accused to wall for a night, 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 the caution interview. I am satisfied that the interviews were voluntary, that those were obtained in fair circumstances, that those were 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 caution interview of the accused on 12.6.2013 and the charge statement on 12.6.2013, being voluntary made and not created out of oppression is therefore admissible in evidence.



  
Sudharshana De Silva  
**JUDGE**

**At Lautoka**  
**12<sup>th</sup> May 2014**

**Solicitors: Office of the Director of Public Prosecutions for prosecution**  
**Office of the Legal Aid Commission for the accused**