

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 52 of 2012

BETWEEN:

THE STATE

AND:

PENAIA VALEVESI

Counsel: Mr. M. Maitava for the State
Ms. M. Tarai for the Accused

Date of Hearing: 8 July 2014
Date of Ruling: 9 July 2014

RULING

- [1] The accused objects to the admissibility of his caution interview, which contains a confession. The grounds for objections are as follows:
- (i) He wasn't promptly informed of the reasons behind his detainment whilst he was waiting for the Police Officers to pick him from his village;
 - (ii) The confessions and/or admissions were involuntarily given since they were obtained as a result of threats from Officer Savou.

- (iii) There was a breach of his rights under the Judges Rules when the Interviewing Officer had failed to contemporaneously record down all the questions the accused was asked and all his answers which were given.
 - (iv) There was no witnessing officer during the interview.
 - (v) The accused was oppressed and was in fear before, during and after his interview.
 - (vi) There was breach of his rights under the International Covenant on Civil and Political Rights.
- [2] The rules regarding admissibility of a confession made to a person in authority are governed by the common law. A voir dire was held to determine the admissibility. In determining admissibility, I bear in mind the principle enunciated in **Ibrahim v R** [1914] AC 599 that a confession made by an accused to a person in authority would not be properly given in evidence unless it was shown that it was made voluntarily, that is, not obtained through violence, fear of prejudice, oppression, threats and promises or other inducement. It must also be borne in mind that even if such voluntariness is established, the trial judge has discretion to exclude a confession on a ground of unfairness. (**R v Sang** [1980] AC 402).
- [3] If oppression is alleged, then the test for oppression is whether the accused confessed because he was placed under circumstances that undermined or weakened the exercise of his free will (**R v Prestly** [1965] 51 Cr. App. R.). The onus of proving voluntariness, fairness, lack of oppression and advisement of rights is on the prosecution. The standard of proof is beyond reasonable doubt.

- [4] The prosecution called two witnesses. The first witness was the interviewing officer, DC Savou. The second witness was the witnessing officer DC Jimione. The accused elected to give evidence.
- [5] It is not in dispute that the accused was arrested on 6 September 2012 at around 12 noon from his home in Naivaka Village in Bua. A day before the arrest, the accused said a police officer had called him on the telephone and told him to remain at home and not to go anywhere. The following day three police officers came to his home and arrested him. Two officers came in civilian clothes. One officer was in uniform. The accused said one officer was related to him but he did not know the true nature of their relationship.
- [6] Following arrest, the accused was transported to the Nabouwalu Police Station in a vehicle. The arresting officer did a stopover at the Lekutu Police Post before heading to Nabouwalu. The accused arrived at Nabouwalu Station at around 4.30pm. He was locked up in a cell overnight.
- [7] According to the accused he was given a late meal. The following morning (7/9/12), the caution interview was commenced at 12 noon and was concluded at 5.30pm. The accused was given an hour of lunch break at 12.30pm. The interview was conducted by DC Savou using I-taukei language. After conclusion of the interview, DC Savou translated the contents in English. The rights of the accused was put to him as follows:

Q3: You will be informed of your Rights in that you have the right to consult a Lawyer of your own choice, a Legal Aid Commission which is free of charge, a relative or next of kin, your wife or parents, a pastor from your own denomination or anyone from the

Social Welfare Department to be with you during the time of your interview.

Do you understand the above Rights given above?

A: Yes.

- [8] The accused said he understood his rights and elected not to exercise them (Questions 4 & 5).
- [9] The allegations were put to the accused and he was told that he was not obliged to say anything. According to DC Savou, the accused freely and voluntarily gave his answers. DC Savou denies threatening the accused as alleged by him. DC Jimione said he was present at the commencement and conclusion of the interview. The reason his signature does not appear in pages 3 and 5 of the I-taukei version is that DC Savou did not give those pages to him to sign. However, DC Jimione agrees that in the middle of the interview, he was not physically present in the crime office where the interview was being conducted but he was within the vicinity of the crime office and could hear everything that was being said in the interview.
- [10] DC Jimione said that although the station diary says he had signed off from work at 4.28pm he remained within the station. DC Jimione says the station diary entry is incorrect.
- [11] The accused's evidence is that DC Jimione was not present at all during the interview. The accused's says that DC Savou threatened him that he was going to be assaulted if he was going to deny the allegation. The alleged threat was made in the middle of the interview before he gave the incriminating answers. The accused says he gave the incriminating answers because he was in fear of the threat that DC Savou made.

- [12] The accused says he was unaware of the complaint procedure and that is why he did not report the threat to anyone including the learned Magistrate who arraigned him in the Magistrates' Court.
- [13] Whether DC Savou made the alleged threat is a question of credibility. DC Savou denies making the alleged threat. The prosecution relies on the presence of the witnessing officer during the interview to bolster DC Savou's credibility that no threat was made to the accused during the interview.
- [14] The accused's says that DC Jimione was never present during the interview and that is why he would not have known about the threat made to him by DC Savou.
- [15] The onus is on the prosecution to prove that the accused was not threatened during the interview. Whether DC Jimione was present during the interview is also a question of credibility. The station diary contains an entry that DC Jimione had signed off from work at 4.28pm on the day the interview was concluded.
- [16] According to the record of interview, the interview was concluded at 5.30pm and DC Jimione signed the record after the conclusion of the interview.
- [17] DC Savou's evidence is that the entries in the station diary are accurate while DC Jimione's evidence is that the signing off from work entry is inaccurate. Thus, I find a material contradiction in the evidence of the two prosecution witnesses.

- [18] The station diary supports the accused's version that DC Jimione was not present during the interview and therefore he would not have known about the threat that DC Savou made to him.
- [19] Because of the contradiction in the evidence of the two prosecution witnesses, I am not sure whether the threat was not made to the accused. On the evidence led in the voir dire, I am unable to conclude that the accused gave his confession freely and voluntarily, without any threat of assault.
- [20] The benefit of doubt is to be given to the accused. The prosecution has failed to prove beyond reasonable doubt that the accused made his confession freely and voluntarily. On that ground alone, the confession is ruled inadmissible. It is not necessary to consider the other grounds.



Daniel Goundar
JUDGE



At Labasa
Wednesday 9 July 2014

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