

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 207 OF 2013

STATE

-v-

NAVITALAI NAIVALULEVU

Counsels : Ms. L. Latu for the State
Ms. L. Raisua for the accused

Date of hearing : 7 August 2014

Date of Ruling : 8 August 2014

(Name of the victim is suppressed. She is referred to as AN)

Voir Dire Ruling

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 31.10.2013. The accused objects to the admissibility of this document on the following grounds:
 - (i) That his admissions and/or confessions were obtained involuntarily through pressure, duress, oppression and force by the police upon his arrest, while he was being transported to the Tavua police station from Koroboya village, Tavua and while he was in police custody at the Tavua police station.
 - (ii) That on the 30th October 2013, he was arrested by 5 police officers including one officer who was known to the accused as Sergeant Simeli. Out of the these 5 police officers, there was a female I-Taukei police officer who was not in uniform, 3 male I-Taukei police officers and 1 male Indian police officer.
 - (iii) That whilst the accused being taken to the Tavua police station, he was physically assaulted by Sergeant Simeli.
 - (iv) That he was also verbally assaulted by Sergeant Simeli and the female police officer while he was being transported to the Tavua police station.
 - (v) That the vehicle in which he was transported in was stopped somewhere between Koroboya village and the Tavua police station and the accused was made to sit on the road while Sergeant Simeli questioned him about the allegations.
 - (vi) That during his interview at the Tavua police station, he was threatened by the interviewing officer that another team of police officers will deal with him should he deny the allegations.

- (vii) That he admitted and/or confessed in his interview and charging statement as he had feared for his life and he reasonably believed that he would be subjected to further torture should he not listen or co-operate with 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 confession. Finally, where the rights of the suspect under 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.

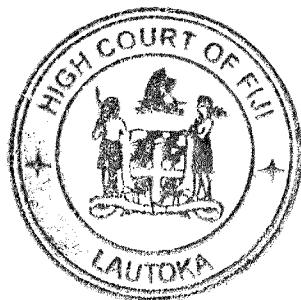
*First, it must be established affirmatively by the crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as use of force, threats or prejudice or inducement by offer of some advantage-what has been picturesquely described 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 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 first witness was PC Loame Turagalevu. On instructions received from Cpl. Eremasi he had caution interviewed the accused at the crime office Tavua police station. It was commenced at 9.50 a.m. The accused was given his rights. It was in I-Taukei language. He had taken notes. He did not threat or intimidate the accused. It was concluded on 1.11.2013 at 9.59 hours. The answers were voluntarily given by the accused. Accused did not make any complaint to him. He tendered a carbon copy of the interview marked P1 and an English translation marked P2. The accused was also taken for a reconstruction.
10. Under cross examination he admitted that the accused did not know how to read or write. He denied that his rights were not given. He denied threatening the accused during the interview. He denied telling him if he did not admit another team will be brought into interview him. He denied that answers to questions 40-49 were not given by the accused. He denied that when accused was brought in after arrest Sgt. Meli gripped the neck of the accused for 3 minutes.
11. The next witness for the prosecution was Sgt. Meli Baleilevuka. He is an officer with 25 years experience. He had led the group of police officers who went to Koroboya village. He had taken steps to record the statements of the witnesses and to take the victim for medical examination. Then they have gone to arrest the suspect. He had waited in the vehicle while PC Loame and SC Suliamo had gone to arrest the suspect. After suspect was brought in he had told the reason for arrest and taken him to Tavua police station. He was not assaulted or threatened on the way.
12. Under cross examination he admitted that the suspect was arrested around 6.00 p.m. He denied verbally abusing the suspect on the way. He denied stopping the police vehicle on the way, asking the accused to get down and sit on the road and squeezing the suspect's jaw for 2-3 minutes.

13. After the close of the prosecution case I found a case to answer from the accused in the trial within a trial and explained the accused his rights.
14. The accused gave evidence. He stated that on 30.10.2013 around 6.00 p.m. police came to his house. He had given them bowl of grog. He was asked to come to police station. No reason was given. One of the officers was his nephew. They left home and came down to the highway. There was a police vehicle. He got into it. On the way police vehicle was stopped he was asked to get down and sit on the road. The Sargent squeezed his jaw for about 1 minute. He was asking about the allegation at that time. He was really scared and admitted the allegation. Then he was taken to Tavua police station. Following day he was questioned by his nephew. When he asked he did not admit the allegation. Then he was told that if he did not admit the allegation he will call another team of officers. He thought they will call Army officers. He was really scared of what police officer is capable of doing. He can't stand arguments. He gave answers to the questions asked during the two days as he was scared. He put his thumb impression voluntarily. The interview was read back to him.
15. Under cross examination he stated that he did not complaint to Loame of anything. He was scared and he could not tell. He had not complained to the Magistrate when he was taken to Tavua court. He was only assaulted on the road. He did not complain as he didn't know whether it was right to complain.
16. I have carefully considered the available evidence in respect of the caution interview on 31.10.2013 of the accused.
17. Accordingly I have come to the view that in regard to any allegation of assault or threat by the police, the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the accused that his neck or jaw was squeezed by a police officer. 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.
18. The caution interview of the accused on 31.10.2013, being voluntary made and not created out of oppression is therefore admissible in evidence.



At Lautoka
08th August 2014


Sudharshana De Silva
JUDGE

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