

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: 176 OF 2012

STATE

-v-

RAJENDRA

Counsels : **Mr. S. Babitu for the State**
Ms. C. Choy for the Accused

Date of hearing : **29 September 2014**
Date of Ruling : **01 October 2014**

Voir Dire Ruling

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 10.12.2012 and charge statement dated 11.12.2012. The accused objects to the admissibility of this document on the following grounds filed by him on 22.10.2013.

- (i) Negating the deceased injuries at the time and instead took me to the police station and threatened me using intimidating tactics and forcing me to admit that I had inflicted the injuries that was on the deceased.
- (ii) Had not given me a choice to choose a lawyer during the process of arrest from the wharf and during the interview.
- (iii) Had not given me the time to become sober after having consumed 18 point of alcohol prior to my arrest.

Two additional grounds were filed on 22.9.2014.

- (iv) That his admission and/or confession were obtained by threats, inducement and under duress by the police. The following officers were namely D/CPL 2061 Salen Kumar (the interviewing officer) and one iTaukei officer and one Indo Fijian officer.

- (v) That his level of education is till class 5 and he is unable to read and write in English and in Hindi. The Police officers made up the answers in his caution interview and didn't read nor explain the caution interview and he was just told to sign on every page.
2. The test of admissibility of all confessional statements made to the Police officers, is whether those were 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 thetyranny 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 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 WPC Aralai. On 10.12.2012 when she was the station orderly, at 1150 hours DC Senitiki had released the accused from the cell to be taken to the Lautoka hospital. The accused had not made any complaint to her. They have come back at 1410 hours. She identified the accused in Court. Under cross examination she stated that she observed left side of the head of the accused was swollen. She had not noticed any other injuries.
10. The next witness was DC Senitiki. On 10.12.2014 he had received instructions to escort the accused to Lautoka hospital. He had seen the accused's forehead swollen. He had not seen any other injuries. The accused had not made any complain. He identified the accused in Court. Under cross examination he stated that he took the accused to the Emergency Department of the hospital. He was with the accused, when he was examined by the doctor.
11. The third witness was DC Salen Kumar. He is an officer with 25 years experience. He had received instructions to interview the accused. D/Inspector Keshwan Naidu was the witnessing officer. The interview was conducted at the Crime office in Hindustani language. He had observed swollen left eye brow of the accused before the interview. The accused did not make a complaint before or during the interview. He did not threaten or induce the accused in any way before or during the interview. Witnessing officer also did not do such things. The accused gave his answers voluntarily. The interview was conducted for two

days. The accused was given breaks. A reconstruction was done during the interview. No inducement or threat was made by anyone during the reconstruction. The accused did not make any complaint. At the conclusion of the interview accused did not make any complaint. The accused signed the interview notes. He had made a translation. He identified and tendered the original interview notes marked VD1A and the original translation marked VD1B. He identified the accused in Court.

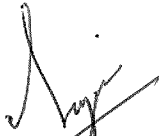
12. Under cross examination he said that he did not notice any injury on accused's hands. He denied that iTaukei officer was also present behind the accused during the interview. There were four tables in this room. They were at a table on a side. He denied being at the table in the middle. He denied the accused being pressured during the interview. He denied telling the accused that if he doesn't plead guilty Army officers will be called and they will break your hand and leg. Three breaks were given on the first day. He admitted that accused did not know how to read or write in English language. The accused could not read in Hindi language but he could understand Hindi language. He denied that accused's rights were not given. He denied that content was not read over to the accused before he signed the interview notes. JP who came after 5.00 p.m. had spoken with the accused for 10-15 minutes.
13. The next witness was Keshwan Naidu. He is a retired police Inspector. He is the witnessing officer of the accused's interview. The interview was in the crime office. It was in Hindustani language. The accused was not threatened or induced by him or the interviewing officer to give the answers. The accused did not make a complaint before or during the interview. The accused gave answers voluntarily. At the reconstruction accused was not threatened to give the answers. At the conclusion he did not threaten the accused. He did not see anyone else doing so. He identified the accused and the original interview notes.
14. Under cross examination he stated that the interview was conducted at a separate table. That was not in the middle but close to a window. He denied iTaukei officer being present during the interview. He denied that the accused was not given the right to contact a legal aid counsel or that he was not given his rights. He denied threatening the accused to call Army officers if he did not plead guilty. He denied that the content was not read and explained to the accused. He denied that the accused was pressured to sign the interview.
15. PC Vedh Prakash was the next witness for the prosecution. He had charged the accused on 11.12.2012. The accused did not make any complaint to him. The accused was not forced or induced to give answers. The witnessing officer Sgt. Kishore had not done so. The accused gave the answers voluntarily. During the charge the accused made a statement. He was not induced or forced to make a statement. He identified and tendered the charge statement marked VD 2A and the translation marked VD 2B. He identified the accused in Court.

16. Under cross examination he denied Salen being present. He denied that accused's rights were not given. He denied that questions and answers were already written and accused was only asked to sign.
17. Sgt. Kishore Chand was the next witness for the prosecution. He was the witnessing officer of the charge interview of the accused. He had not induced or threatened the accused to give the answers. The accused did not make any complaint. He identified VD 2A and the accused in Court. Under cross examination he denied that Salen was present. He denied that accused was not given his rights. He denied that the content was not explained to the accused. He denied that questions and answers were already written and the accused was only asked to sign.
18. The next witness for the prosecution was Sgt. Anisi Dau. He is the investigating officer of the case. The accused was arrested on 9.12.2012 at the Lautoka fisheries jetty. There was a swelling on the forehead of the accused. The Fijian boy who was travelling with the accused had assaulted him at the time of the incident. The accused did not make a complaint to him.
19. Under cross examination he stated that the accused smelt of liquor at the time of arrest. The accused was escorted to the hospital before he was interviewed. He admitted that he had made a statement that the accused was taken to the hospital on 11.12.2012.
20. The last witness for the prosecution was DC Samuela. He had escorted the accused to Court on 12.12.2012. The accused did not make any complaint to him. He had not noticed any injury on the accused. He identified the accused in Court. He was not cross examined by the defence.
21. After the close of the prosecution case, I found a case to answer from the accused in the trial within the trial. The accused was explained his rights.
22. The accused gave evidence. He stated that on 9.12.2012 around 9.00 p.m. he was at the wharf. Police vehicle had come and taken him to the police station. He was locked in the cell. Next day he was taken to the hospital. A doctor had examined him. He had an injury in his small finger. Then his statement was taken. Salen, Dau and the retired officer were present. He was in the middle table. While he was being interviewed Salen and retired officer were forcing him to plead guilty so that their time was not wasted. He got frightened. He was told if you don't plead guilty they will call the army officers, they will come and beat you and break your legs and make you cripple. So he pleaded guilty. He was not given any right. As soon as the retired officer came he started swearing at him. He was only asked to sign in some places. The content was not read back and explained to him. He was taken for reconstruction. He said he signed the interview willingly. The retired officer had pressured him. Before the time of his arrest he had some Beer. But he was in control and wasn't drunk that night.

23. Under cross examination he said that iTaukei officer did not force him to give answers. He had told Salen to write whatever he wants. He was asked questions and he gave answers for all the questions. He understood everything they were asking. When he was asked whether he gave answers voluntarily? His reply was I did give. I was frightened. He had not told the JP that police forced him to give answers. He was told by police officers before not to change anything. He was not alone with the JP. He had placed his signature voluntarily. He had not made the charge statement voluntarily. He was forced. Pressure was from Salen and the retired officer.
24. Both parties have filed written submissions. I have considered those.
25. I have carefully considered the available evidence in respect of the caution interview on 10.12.2012 and the charge statement on 11.12. 2012 of the accused.
26. Accordingly, I have come to the view that in regard to any allegation of threats, force or pressure by the police during the caution interview and the charge statement, the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the accused that he was threatened, forced and pressured during his caution interview. I am satisfied that the interviews were voluntary, that those were obtained in fair circumstances, that those were in no way oppressed out of the accused in contravention of his rights either under the Judges' Rules or of the Constitution which was not in operation.
27. The caution interview of the accused of 10.12.2012 and the charge statement of 11.12.2012, being voluntary made and not created out of oppression is therefore admissible in evidence.



At Lautoka
1st October 2014


Sudharshana De Silva
JUDGE

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