

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

**CRIMINAL CASE NO: HAC 385/2012**

**BETWEEN:**                    **THE STATE**

**AND:**                            **SEMI KOROITUKANA**

**COUNSEL:**                    **Ms S Kant for the State**  
   **Ms Nawasaitoga for the Accused**

**Date of Hearing:**            **08/12/2014**

**Date of Ruling:**            **09/12/2014**

**VOIRE DIRE RULING**

[01] The accused objects to the admissibility of the caution interview made on the 20/10/2012 at Navua 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. The accused was in shock and pain following the beating from the complainant's relatives when he was taken to the police station and was not asked and/or taken by police officer Iliesa to hospital for medical check-up and/or the interview deferred until the accused recovers.
2. The accused was threatened by the police officers by the name of Iosefo and Iliesa to admit the rape during the investigation of the alleged rape in the village.

3. The accused was not given a chance by officer Iliesa to see a family member, religious worker before the interview commenced.

- [02] The test for the admissibility of statement made by an accused to 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.
- [04] At the Voire Dire inquiry Prosecution called four witnesses.
- [05] SC/2782 Iosefo was attached to Namosi Community Post in the year 2012. On 18/10/2012 he had gone to Nakavika Village to arrest the accused on the charge of rape. DC/2930 Iliesa also accompanied him. He was arrested and brought to Namosi Community Post and thereafter the accused was taken to Navua Police Station. No injuries seen on the accused's body. Accused did not complain of any assault at the time of arrest.
- [06] In the cross examination witness admitted that the accused was kept for two days in police custody before recording his caution interview statement. Witness denied that the accused had swollen eye at the time of arrest. He denied threatening or assaulting the accused at the police station.
- [07] WPC 2400 Maria was the charging officer who gave evidence next. According to her she charged the accused on 20/10/2012 at Navua Police Station. Before the charge she had explained all the rights of the accused. The charge was taken in Fijian Language. She identified the accused in open

court. The charge statement was marked as P1. During or after the charge accused was not subjected to any threat or assault.

- [08] In the cross examination witness said that the accused was brought to Navua Police Station first time. Accused was not inquired about his educational level before the charge. During the charge the accused denied the allegation.
- [09] DC/2930 Iliesa has completed 15 years' service in Fiji Police Force. He has recorded the caution interview of the accused. Further he had taken the accused from Namosi Police Post on 19/10/2012. According to him the accused was arrested on 19/10/2012. He had recorded the caution interview of the accused on 20/10/2012. Constable Simione was present as witnessing officer. Interview started at 8.50am and concluded at 11.30am. All the rights were given and the interview recorded in Fijian Language and translated the same in to English Language. Original caution interview was marked as P2 and the English translation was marked as P2 (a). According to the witness the accused was not threatened or assaulted during the interview.
- [10] In the re-examination witness said that the accused was received from Namosi Police Post on 19/10/2012. He denied that the accused was in state of shock as he was assaulted by relatives of the victim before he was arrested. Witness admitted that the accused was in police custody first time. Witness admitted that he did not ask him whether he wanted go to the hospital before recording his caution interview statement.
- [11] Finally prosecution called DC3630 Simione to the court. He is the witnessing officer to the caution interview statement. He corroborated what DC/Iliesa said in his evidence.

This is the end of prosecution case. Defence was called and explained the rights of the accused. Accused elected to give evidence from witness box.

[12] Accused when giving evidence said that he was assaulted by the villages before he was taken into custody. As a result he had injuries on his body but was not taken to hospital by the police. He could not even walk properly at the time of his arrest. Accused said that he can't remember whether he had sought forgiveness from the police. He denied admitting the charge at the caution interview statement. Further police officers did not give any of his rights before or during recording his caution interview statement.

[13] In the cross examination accused said that he was asked to go from the village by the village headman. Thereafter police arrested him and took him to Namosi Police Post before he was taken to Navua Police Station. Before his arrest he was beaten up by the villagers. No medical treatment was given to him. He was suffering from pain when his interview was recorded. After he was granted bail he took herbal medicine. As he was not familiar with procedures he did not complain to anybody about his assault.

[14] In the re-examination accused said that he placed his signature on his caution interview statement without understanding the contents.

### Analysis

[15] The police officers giving evidence said that the accused was never forced to make a statement. He was in good health when his caution interview statement was recorded. He was given all of his rights before recording his interview.

[16] Accused in his evidence said that he was assaulted by the villages before he was arrested by the police on 18/10/2012. His caution interview was recorded while he was suffering from pain.

- [17] The accused was arrested on 18/10/2012 but his caution interview was recorded only on 20/10/2012. The police officer who had gone to Namosi Village to arrest the accused on 18/10/2012 said that he was arrested on 19/10/2012. I consider this a wilful suppression of evidence by the police. The accused was in police custody two days prior to recording his caution interview statement. But he was not taken to hospital for a medical check-up even though he complained of assault by the villagers. This clearly establishes the defence's version.
- [18] I, therefore, rule out the admissibility of the alleged caution interview statement of the accused marked as P2 on the ground of its involuntariness. It's admission in evidence will affect the fairness of the proceedings. Accordingly, I reject the caution interview statements of the accused as being irrelevant.



A handwritten signature in purple ink, consisting of a vertical line followed by a series of wavy, connected strokes.

P Kumararatnam

**JUDGE**

At Suva  
09/12/2012