

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 116 OF 2011L

BETWEEN : STATE

AND : SIONE SADRUGU

Counsel : Mr. Niudamu J for State
The Accused is in person,

Date of Hearing : 24th of February 2015

Date of Ruling : 26th of February 2015

RULING ON VOIR DIRE

1. The accused person informed the court that he wishes to challenge the admissibility of his caution interview as evidence at the trial. He stated in his written grounds for voir dire that he was slapped on his ear by a police officer and it started to bleed during the recording of his caution interview. Moreover, the police officers swore and threatened him and treated in a harsh way. He stated that he made his confession in the caution interview under inducement.
2. The voir dire hearing was set down on 24th of February 2015. The prosecution called four witnesses during the cause of the hearing. The accused gave evidence on oaths. Having carefully considered the grounds for voir dire, the

evidence presented by the prosecution and the defence, I now proceed to pronounce my ruling as follows.

3. I first draw my attention to discuss the applicable law on the admissibility of caution interview as an evidence during the hearing.
4. The Privy Council in WONG KAM-MING v THE QUEEN (1982) A.C. 247 at 261 has discussed the basic control over admissibility of statement, where it was held that *"The basic control over admissibility of statement 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 Shiu Charan v R (F.C.A. Crim. App. 46/83) has discussed the applicable test to determine the admissibility of caution interview of the accused person at the trial, where it was held that *"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 the use of force, threats or prejudice or inducement by offer of some advantage - what has been picturesquely described as "the flattery of hope or the tyranny of fear." Ibrahim v R (1914) AC 599. DPP v Pin Lin (1976) AC 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

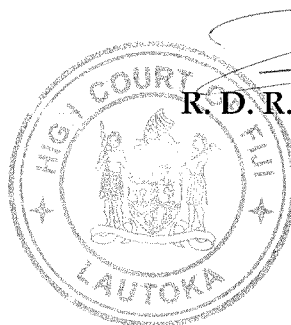
Sang (1980) AC 402, 436 @ c - E." (State v Rokotuiwai - [1996] FJHC 159; Hac0009r.95s (21 November 1996).

6. It appears that the test enunciated in *Shiu Charan* (supra) constitutes two components. The first is the test of voluntariness. The court is required to satisfy that the statement in the caution interview has been taken without any form of force, threats or prejudice or inducement by offer of any advantage. The second component is that, even though the court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation or inducement, it is still required to satisfy further that there were no any general grounds of unfairness existed before or during the recording of the caution interview.
7. It is the burden on the prosecution to prove beyond reasonable doubt that the statement made in the caution interview was made voluntarily and without the existence of any form of general unfairness (*State v Rokotuiwai - [1996] FJHC 159; Hac0009r.95s (21 November 1996)*). This burden on the prosecution remains throughout the hearing.
8. Having discussed the laws pertaining to the admissibility of caution interview and the standard of proof, I now draw my attention to this instant case.
9. The first prosecution witness is the interviewing officer. He stated in his evidence that he observed a cut on the left ear of the accused, but denied it was bleeding when he was interviewed. He stated that there was no witnessing officer during the recording of the caution interview, however the charging officer, witnessing officer of the charging statement and the investigation officer were present in the crime office at that time. He specifically stated that though these officers were present in the crime office,

none of them interrupted the conduct of the caution interview. The accused was given his rights to consult a counsel and treated well during the recording of the caution interview. The interviewing officer confirmed that he recorded the two injuries that the accused had sustained before he was arrested in his caution interview. He affirmatively stated that the accused was not threatened, forced, assaulted or induced to make his statement in the caution interview.

10. The second prosecution witness is the charging officer. He too confirmed the accused was treated well and had not received any complaint from the accused. He too affirmatively stated that the accused was not forced, threatened, induced, or assaulted during the recording of his charging statement. The third prosecution witness who is the witnessing officer of the charging statement supported the evidence of PW2 in his evidence.
11. The fourth prosecution witness is the investigation officer. Apart from that he was a member of the arresting team with PW2. He stated that PW2 gave his rights and cautioned him before he was formally arrested. He stated that the accused was treated well. The injury that the accused had on his left ear at the time of his arrest has recorded in the cell book, which confirms that the accused had that injury before he was arrested. He further stated that he translated the caution interview of the accused into English language.
12. The accused in his evidence mainly alleged that he was slapped by the police officers while he was answering to the questions. However, all the prosecution witnesses denied such allegation and constantly refused that the accused person's left ear was bleeding as a result of slapping.
13. Having considered the evidence presented during the hearing, I am satisfied with the consistent and affirmative nature of the prosecution evidence, which

confirms beyond reasonable doubt that the accused gave his statement in his caution interview voluntarily and free of any unfair treatments. I accordingly hold that the caution interview of the accused person is admissible as evidence in the hearing.



R. D. R. Thushara Rajasinghe
Judge

At Lautoka
26th of February 2015

Solicitors : Office of the Director of Public Prosecutions
The accused person,