

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 54 of 2014

STATE

v.

ESAVA TUIVODO

Counsel: Ms. Kumar D. for State
Ms. Kean T. for Accused

Date of Hearing: 8th and 9th June 2015

Ruling: 11th June 2015

RULING

[Voir Dire]

1. The accused Esava Tuivodo challenges the admissibility of his caution interview statement and the charge statement he made to police on the following grounds:

1. The accused whilst at the Navua Police Station before he was interviewed was threatened by some unknown police officers that he will be taken to jail due to the rape allegation against him.
2. The accused during the time he was caution interviewed, he asked to be interviewed in I-taukei language. The interview was

- conducted in the I-taukei language but written in English language.
3. The accused was not asked if he wish to read his caution interview statement nor was it read back to him.
 4. The accused during the time he was charged he asked to be interviewed in the I-taukei language. The interview was conducted in the I-taukei language but written in the English language.
 5. The accused was not asked if he wish to read his charged interview statement nor was it read back to him.
 6. There was a breach of his rights under the Judges Rules and Articles 9 (2), 10 (1) and 14 (3) (g) of the International Covenant on Civil and Political Rights during his interview and his constitutional rights under section 13 (1) (a) and 14 (2) (b) of the 2013 Constitution of Fiji.
2. The prosecution must prove beyond reasonable doubt that the confession made by the accused was voluntary, and was made without threats, inducement, promise or oppression. Also prosecution must prove that the accused was given his rights and if his rights were breached that he was not prejudiced by the breach.

Evidence

3. Prosecution called 2 witnesses, the Interviewing Officer and the Charging Officer to give evidence
4. Interviewing Officer PC 4658 Ilimo said that the interview was conducted in English language. Accused person's right to consult a lawyer was given. He was also cautioned. There had been no witnessing officer for the interview.

He said that he spoke to the accused in English language. Accused had not complained of anything. Accused had answered on his own free will. He said that the accused was allowed to read the statement but he did not want to read it. However, the witness has not written down that in the record of interview. He had asked that accused whether he wished to add, alter or delete anything but the accused had said 'no'.

5. The witness further said that sometimes when the accused did not understand the questions he had explained to him in I-taukei language. Accused had been sitting down about 1 meter away from him on the other side of the table.
6. In cross examination he said that the accused elected to be interviewed in English language. He said that only question No. 6 was explained to the accused in I-taukei language. When it was suggested that the accused person wanted a lawyer, the witness denied. He said that he did not write in the interview record that he explained question No. 6 to the accused in I-taukei language. He said that he did not write in the record that he gave the accused the opportunity to read or to be read to him the interview statement. He denied that all the questions were put to accused in I-taukei language. He said that he was not told that the suspect's one eye was blind.
7. PC 2950 Semisi Seru, the Charging officer gave evidence next. He had conducted the charge. Accused has opted to be charged in English language, He was given the right to counsel. Accused understood the allegation, he said. He said that the accused was allowed to read the charge statement but he did not write that in the record. His conversation with accused had been in I-taukei. He said that the accused understood the charge and signed. He has not recorded that he read the statement to the accused. Accused had been calm and had given the statement on his own free will, he said. He said that

he was explaining the accused in I-taukei language what he was writing. Accused had also answered in I-taukei language but he had written in English, he said.

8. In cross examination he said that although he conducted the charge in I-taukei language he wrote it in English language as it was convenient. Accused had not disputed the recording in English language. He had not written in the record that it was explained in I-taukei language. He said that their conversation was casual and therefore he may have forgotten to write that it was read over to the accused. He denied that it was a breach of the accused person's right.
9. On behalf of the defence the accused gave evidence. He said that he was questioned by PC 4658 Ilimo on the 28/01/2014 in I-taukei language and that he answered in I-taukei language. The police officer had not read his rights to him. He was not asked whether he wanted a lawyer. One police officer had shouted at him to answer quickly. He was not given a chance to read his statement, nor it was read to him, he said. He has signed the statement as he was asked to sign. He said that he understood the allegation put to him. It was the first time he went to a police station, he said.
10. When he was charged PC Semisi had questioned him. There had been other police officers. One officer had thrown a file in front of him. He had told him to answer otherwise he would punch him in his blind eye.
11. PC Semisi had been speaking to him in I-taukei language. He had not read the charge. He said he can't recall whether PC Semisi read it to him. He has signed the charge statement without reading it because that was the 1st time in

police station and if they explained it to him he would have asked them to read it, he said. He has read the document when he came to the High Court.

12. In cross examination he said that he cannot recall whether PC Ilimo asked for the language which he preferred. He said he cannot recall that he chose the English language. He said that he answered question No. 1 in I-taukei language. He had told that he did not complete form 5 in school. He said that he signed the document as he was scared.
13. He said that he was not explained the caution. He said he was not explained his right to consult a lawyer and if he was explained, he would have asked for a lawyer. He said that his rights were not explained to him.
14. He said that they were opposite to each other when the interview was recorded but he could not read it clearly when the officer was writing. He also said that he has a bad eye. He had thought that PC Ilimo was writing in I-taukei. After the interview it was not explained to him, he said. He said that he is telling the truth.
15. The test which should be applied when deciding the admissibility of an admission of an accused was discussed in Fiji Court of Appeal in **Ganga Ram** and **Shiu Charan** case in 1983 (unreported). The court said;

"...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 the use of force, threats of prejudice or inducement by offer of some advantage what has been picturesquely

*described as "the flattery of hope or the tyranny of fear".....
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..."*

16. In the instant case both the police officers who recorded the caution interview statement and the charge statement testified that the statements were made by the accused voluntarily. Accused said in his evidence that one police officer shouted at him to answer quickly and another police officer threw a file and threatened to punch him if he did not answer. None of these allegations were even suggested to the two police officers by the defence when they gave evidence. No complaint had been made to any authority by the accused about these allegations. The *Voire Dire* ground 1 of the accused is that some unknown police officers threatened the accused that he will be taken to jail. This was never mentioned by the accused in evidence and police officer PC Ilimo testified that no police officer threatened the accused that he would be taken to jail. I find the evidence of the police officers were truthful when they said that the statements were made voluntarily and that no threats were made to the accused.
17. The second part of the test is to find whether the accused was given his rights. The police officers said in evidence that the accused opted to record the statements in English language. In his evidence the accused said that he cannot recall whether PC Ilimo asked him for the language which he preferred. He said that he cannot recall that he chose the English language. However both police officers testified that although the statements were written in English language, the accused was explained in I-taukei language.

The accused also said that he was questioned in I-taukei language. Therefore I find that the accused understood the caution, his rights and the questions put to him.

18. The accused says that the statements were not read to him nor he was given a chance to read. He admitted signing the statements and that he was not forced to sign. He had signed because the police officers asked him to sign. PC Ilimo said that the accused did not want to read the statement, however he has not written that down on record. PC Semisi said that while he was writing the statement in English language he was narrating that to the accused in I-taukei language. The accused said that he saw the statement only when he received it in the High Court. Although the accused did not expressly said, it suggests that what is in the statement is not his version of events or that it is a fabrication. I find that the police officers have not used any kind of trickery or unfair treatment to the accused when recording the caution interview statement and the charge statement. Hence I find that the caution interview statement and the charge statement admissible in evidence. What weight should they give to the evidence is a matter for the assessors at the trial proper.




Priyantha Fernando
Judge

At Suva

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for Accused