

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 91 OF 2013

STATE

-v-

AJIT SINGH

Counsel: Mr. A. Datt for the State
Ms. J. Lagi for the Accused

Date of Hearing: 07th, 08th March, 2016

Date of Ruling: 09th March, 2016

VOIR DIRE RULING

1. The State seeks to adduce into evidence the cautioned interview statement and the Charge statement of the Accused, Ajit Singh, made at the Ba Police Station on 18th and 20th of April, 2013 respectively.
2. The test of admissibility of all confessional statement made to a police officer 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 suspects 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. Accused objects to the admissibility of his interview on the grounds:

THAT his confessions were obtained involuntarily through pressure, duress and force by the police at Ba Police Station.

THAT he was arrested at Complainant's house and take to a Police Post. He was assaulted along the way from Complainant's house to the Police Post. He recalls being assaulted by one Fijian Police Officer of Indian ethnicity. He was also forced and threatened along the way.

THAT at the Police Post he was assaulted with a mop handle on his face and back. The same Fijian Police Officer of Indian ethnicity assaulted me.

THAT at the Ba Police Station he was assaulted threatened and forced by one Fijian Officer of Indian ethnicity by the name of Suraj.

THAT he was assaulted by the same Suraj during caution interview.

THAT he admitted to questions regarding the allegation out of fear, threat, assault and intimidation.

4. What I am required at this stage is to decide whether the interview and charging were conducted fairly and whether the Accused gave the statements voluntarily. If I find that the signature of the Accused was obtained by the Police forcibly, then I can in my discretion exclude the interview and charge statements.

5. The burden of proving voluntariness, fairness, lack of oppression, compliance with Constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the Accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.

6. Now I look at the evidence presented at the trial within trial.

Case for the Prosecution

7. Prosecution called DC Suraj Raj as the first witness. He interviewed the Accused, Ajit Singh, on 18th April 2013 at Ba Police Station. Interview was conducted in Hindi, the preferred language of the Accused, and the interview record was later translated into English. There was no Hindi speaking Police Officer present at that time and, therefore, no one specifically witnessed the interview. However, there were other police officers present in the same room attending to their own work.
8. Accused was given his rights which he opted not to exercise. He did not complain of anything or anybody before or during the interview. Accused was not threatened, assaulted or intimidated. No promise or inducement offered. Accused cooperated and answered all the questions on his own free will.
9. Before he started the interview, he noticed injuries on Accused's body. His nose was bleeding. Upon being inquired, Accused described how he received injuries. He was caught inside the Complainant's house and fell down on a precipice when he was trying to escape. He took the Accused for medical examination at the Ba Mission Hospital with Cpl. Sukhen. Having handed over the Accused to the doctor, he was waiting outside while the medical examination was being conducted. Doctor who examined the Accused opined that Accused was medically fit to be examined.
10. Under cross examination, witness denied that he or any other Police Officer assaulted or intimidated the Accused to get his signature forcibly. He also denied having used a needle to poke Accused's finger nails to scare him.

11. Charging Officer, DC Aveen Kumar gave evidence next. He charged the Accused with Rape and sexual offences at the Charging Room of the Ba Police Station. It was an open place where anybody can have access to.
12. He did not notice any injuries on Accused's body. Accused was not threatened, assaulted or intimidated. No promise or inducement offered. Accused did not complain about assaults by any other officer.
13. Next witness was Doctor Niraj Sharma. He conducted the medical examination on the Accused at the Ba Mission Hospital. Police officers who brought the Accused to hospital had filled out the first part of the Fiji Police Medical Examination Form wherein he was briefed about the history of the patient.
14. Having handed over the Accused to him Police Officers had to leave the examination room for two reasons. He had to ensure doctor-patient privacy and the examination room was quite small. He noticed injuries on Accused's nose and multiple abrasions on his lower back.
15. D-10 of the Police Medical Form contained what the Accused had related to him about the history of injuries. Patient was found to be trespassing in a neighboring house and upon discovery; he had been assaulted by house owner and nearby workers on the road. Accused had not specifically mentioned about Police assaults.
16. Under cross examination, doctor said that abrasions noticed on patient's lower back could have been caused by a blunt trauma.
17. Cpl. Gyanendra Kumar was the next witness for Prosecution. He arrested the Accused beside the road in Moto. Nicklesh Singh was with him at that time. Accused was surrounded by 4-5 Fijian boys who had caught the Accused from the Complainant's house. Accused had a severe bleeding nose and visible scratch marks on his arms. He accompanied the Accused to the Nukuloa Police Post and locked him up for his own

safety as other people were following the Accused to the Police Post. Then the Accused was taken to Balevuto Health Centre as he was complaining of head pain.

18. Under cross examination witness denied having assaulted, pushed or intimidated the Accused. He also denied having banged the Accused's head against a wall.
19. Prosecution called Constable Nicklesh Singh next. He went with Cpl. Gyanendra Kumar who had received some information about a crime in Moto. Beside the road in Moto, Accused was surrounded by group of Fijian boys who later handed over the Accused to Cpl. Gyanendra Kumar. He could see blood on Accused's nose and injuries on his hands. Accused was transported to the Nukuloa Police Post.
20. Under cross examination, witness denied that he or Cpl. Gyanendra Kumar intimidated or assaulted the Accused.
21. Last witness for Prosecution was Sukhen Singh. He saw the Accused when he was in the cell at the Ba Police Station. He took the Accused to the Ba Mission Hospital on the request of DC Suraj as there was no Police driver available. Accused was handed over to the Doctor. He did not enter the examination room or interfere with the medical examination.

Case for the Defence

22. Accused gave evidence for the defence. He was arrested by two Police Officers and took him from the Complainant's house in Moto to the Police Post and inquired him why he went to the Complainant's house. He told them that he went there because her family called him. There were some Water Authority workers also in the compound of the Complainant when the arrest was made.

23. Two Police Officers who arrested him loaded him into a car. On the way, they did not talk to him. Once arrived at the Police Post, Cpl. Gyan pushed him to the wall and his nose started bleeding. Then he asked him to go and have a wash. While he was having a wash, Cpl. Gyan took a broom handle and hit on his back three times with it. Then Cpl. Gyan took him to a Health Centre where ice was put on his bleeding nose by a male doctor. Then they returned to the Nukuloa Police Post and from there he was taken to the Ba Police Station.
24. On their way to the Police station, he received several punches from Cpl. Gyan on his face. Once arrived at the Ba Police Station, he was handed over to Officer Suraj to whom he made a complaint. At the time of arrest he did not have any injuries or bleeding. He had injuries on his nose and broom handle marks on his back only after the arrest was made.
25. Suraj and his driver took him to the Ba Mission Hospital where he was examined. Medical report was tendered in evidence. After examination, he was taken to the Ba Police Station and officer Suraj started the interview. Suraj was poking needles on his finger nails when he was telling the truth and wanted him to admit the allegations. Officer Suraj was pressing his testicles underneath the table.
26. He complained to the father who came to visit him. However, he stopped his father from complaining against the officers who assaulted. Whatever, he said at the interview was on record when it was read back to him. Therefore, he signed the record of interview.
27. He had no opportunity to complain to the Magistrate when he was produced in Court.
28. Under cross examination, he admitted that he informed about all the police harassments to his Counsel who prepared the grounds of *voir dire* when things were fresh in his mind.

Analysis

29. I find that the evidence of the Police Officers to be consistent and plausible.
30. Throughout the proceedings, Prosecution witnesses maintained that any kind of assault or intimidation never took place before or during the interview. Interviewing Officer Suraj Raj, Charging Officer Aveen Kumar, Arresting Officers, Gyanendra Kumar and Nicklesh Singh all maintained that no assault or intimidation took place during arrest or at the interview.
31. I am satisfied, for reasons given in my ruling, that the Accused received injuries when he tried to escape from the Complainant's house and not as a result of Police brutality. I am also satisfied that the Accused gave the confession voluntarily.
32. Both Gyanendra Kumar and Nicklesh had noted injuries on the Accused at the time of the arrest. According to them, Accused had been with 4-5 Fijian boys who had apprehended him when Accused was trying to escape from Complainant's house. Both Gyanendra Kumar and Nicklesh corroborated each other in their respective evidence. Accused also admitted in his evidence that there were Fijian boys at the time Gyanendra Kumar and Nicklesh arrived in Moto to arrest him.
33. Having explained the reason for arrest and detention, Gyanendra Kumar had locked up the Accused for his own safety at the Police Post. Accused admitted that Complainant's family members too had come to the Police Post. Then the Accused was taken to a Health Centre for medical treatments. If the injuries were caused as a result of Police assaults, it is unlikely that the Accused would have been taken for medical treatments by the Police Officers themselves.

34. Accused had made a partial confession when he was charged by Naveen Kumar. He admitted having given such a statement. He also admitted that Naveen Kumar did not assault or threaten him during the charging.
35. Accused had never told the doctor that he was assaulted by Police when he related the history. Instead, he had told the doctor that he was assaulted by house owner and nearby workers. Doctor confirmed that what is written in D-10 of the PME Form was related by the Accused himself.
36. Doctor is an independent witness. Even Accused admitted that doctor had no reason to lie to Court. Doctor said that Police Officers were not allowed inside the consultation during medical examination room as he did not want patient-doctor privacy compromised; also, doctor's room was very small. Both Suraj and his driver Sukhen confirmed that they were not present during medical examination. Accused had ample opportunity to tell the doctor if the injuries were caused by Police brutality.
37. Accused said that he did not get an opportunity to complain to the Magistrate and if he did, he could have lifted his shirt and shown the marks caused by police assaults to the Magistrate. Contradicting his earlier version, accused later admitted, when the copy record of the Magistrates court was shown, that he complained to the Magistrate about police assaults. However, he failed to show any injuries or marks to the Magistrate.
38. Under cross examination, Accused clearly said that he was not assaulted by Police until he was taken to the police post. However, when he was referred to the grounds of *voir dire* he filed, he said that Police Officers might have shoved his ribs with their elbows.

39. Accused said that his head was banged against the wall and he was attacked with a broom stick by Gyanendra Kumar. He also said that, during the interview, his testicles were squeezed and his finger nails were poked with a needle by Suraj Raj. In the grounds of *voir dire* he filed through his Counsel, there is no mention about these types of harassments. Accused admitted that grounds of *voir dire* were formulated on his instructions. If he did tell about these types of harassments, his Counsel had no reason to omit to mention them. It can be assumed that he never told his Counsel about these harassments when things were fresh in his mind. Accused had not been consistent in his version.
40. Evidence of the Accused was completely unsatisfactory. Even though burden of proof was on the Prosecution to prove that the Accused made the confession voluntarily, Accused failed to create any doubt in the Prosecution case.

Conclusion

41. Prosecution proved beyond reasonable doubt that the Accused's interview and charge statement were obtained voluntarily and fairly. I hold cautioned interview statement and charge statement to be admissible in evidence.



At Lautoka
09th March, 2016


Aruna Aluthge
JUDGE

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