

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC. 083 of 2010

STATE

V

SIMELI BILI NAISUA

Counsel : Ms. S. Puamau for State
Ms. M. Tarai for Accused

Dates of Hearing : 19th – 21st January 2016

Date Ruling : 26th January 2016

RULING

1. The Accused is charged with one count of Rape contrary to Section 207(1)(2)(c) of the Crimes Decree 2009.
2. The State seeks to tender the cautioned interview and the charge statement of the accused as evidence in this trial. The accused is challenging the admissibility of the said statements based on the following grounds;
 - a) *The accused was verbally assaulted and threatened during his arrest at Kalekana, Lami.*

- b) *When he was being transported by the arresting officers, D/Sgt Isoa and 3 other police officers threatened him by telling him that he will be assaulted by other police officers if he continues to deny the allegations.*
- c) *Before, during and after his interview, D/Sgt Isoa and DC Inoke were badgering and threatening him to admit to the allegations and that if he denies, then he will be beaten up by the police officers who were present in the station.*
- d) *The accused was scared of the threats by the officers and as a result of the threats and badgering, he admitted to the allegations.*
- e) *That during the charging process, the charging officer WPC Sainimili had also told the accused to seek for forgiveness and because the accused was still in fear, he agreed to this.*
- f) *He never read the interview before signing the same.*
- g) *The accused was oppressed and was in fear before, during and after his interview.*
- h) *There was breach of his rights under the Judges Rules.*
- i) *There was breach of his rights under that international Covenant on Civil and Political Rights.*

3. In **Ganga Ram and Shiu Charan v. R** (1983), the Fiji Court of Appeal held thus;

*“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 (sic) 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. Ping Lin [1976] AC 574.

Secondly, even if such voluntariness is established there is also a need to consider whether the more general ground of unfairness exists in the way in which police behaved, perhaps by breach of the Judges' rules falling short of overbearing will, by trickery or by unfair treatment. R v. Sang [1980] AC 402, 436 at C-E. This is a matter of overriding discretion and one cannot specifically categorise the matters which might be taken into account". [Emphasis added]

4. Accordingly, in order to rule that the cautioned interview and the charged statement are admissible in evidence, the court has to be satisfied beyond reasonable doubt that the admissions in those statements were made voluntarily and that they were obtained in a fair manner.
5. Prosecution led the evidence of Detective Corporal Viliame Nagatalevu, Detective Sergeant Isoa Natui, Detective Corporal Inoke Tui, Police Officer Seinimili Cavuilati, Detective Sergeant Rupeni Taoka and Special Constable Netava Vulagi.
6. According to the prosecution case, the accused was arrested on 07/04/2010 by D/Corporal Tui. The arresting team comprised of him, D/Corporal Nagatalevu and the team leader D/Sergeant Natui. After the accused was arrested, he was handed over to Totogo police station. On 08/04/2010, D/Corporal Nagatalevu brought the accused from the Totogo police station to the Major Crimes Unit at the CID headquarters where the accused was interviewed under caution by D/Sergeant Natui. D/Corporal Tui was the witnessing officer. The accused was formally charged by Police Officer Cavuilati on the same day and he was produced in court on 09/04/2010. Officers D/Sergeant Natui and D/Corporal Tui said that the accused wanted to read the interview notes together with D/Sergeant Natui and that it was read accordingly.
7. The police officers said in their evidence that there was no oppression and they specifically said that they did not threaten or verbally coerce the accused and that the cautioned interview statement at PE1 and the charge statement at PE5 were made voluntarily.

8. The accused gave evidence and said that he was threatened and verbally abused by the police. He was told to admit the charge. He said after he was arrested, he was taken to the CID headquarters in Toorak on the same day where he was threatened and interviewed. He was told that pounded chillies will be rubbed on his body and a hosepipe will be inserted in his anus. Thereafter he was handed over to the Totogo police station. The next day he was taken to Toorak where he was interviewed. Before and during the interview, he was threatened and was told not to deny the allegation. He said he made admissions because he was afraid due to the threats he received. He said he did not read the interview. When he was charged, he was told by the charging officer to apologise to the victim's family and he complied because he was afraid.
9. Based on the above evidence, the accused says that PE1 and PE5 were not made voluntarily.
10. The defence attempted to discredit the evidence of the police officers by highlighting that two station diary entries relevant to this case were inconsistent with their evidence. Defence pointed out that entry number 171 of the Totogo station diary on 07/04/2010 indicates that the accused was brought from the Major Crimes Unit where the prosecution witnesses said that the accused was taken to Totogo police station straight from Kalekana where he was arrested.
11. Defence also highlighted the entry number 3 of the CID station diary on 08/04/2010 which states that the accused was brought in for the '*continuation of his statement interview*'. Based on these two entries, defence took up the position that the accused was threatened and also interviewed on 07/04/2010 at CID headquarters immediately after his arrest. The prosecution witnesses maintained that the accused was interviewed only on 08/04/2010. It is pertinent to note that the accused admitted during cross examination and reaffirmed during the re-examination that he was interviewed only on 08/04/2010.
12. Considering this subsequent admission of the accused that he was interviewed only on 08/04/2010 which was contradictory to his own evidence during the examination in chief and the line of cross examination of the defence counsel, I am inclined to accept the version of the prosecution that the word '*continuation*' in entry number 3 of the CID

station diary on 08/04/2010 and the words 'Major Crime' in entry number 171 of the Totogo station diary on 07/04/2010 are written by mistake.

13. Considering the grounds of objection raised in this case together with the submissions made by the defence counsel, the following 3 main grounds can be discerned;

a) Admissions in the cautioned interview and the charge statement were made as a result of verbal abuse and threats made by police officers. [Grounds (a) - (e), (g) and (i). Though ground (i) refers to ICCPR, according to the defence counsel the basis of this ground is that the accused was not treated with dignity as a result of the threats and the verbal abuse.]

b) Accused did not read the interview before signing.
[Ground (f)]

c) There was a breach of the Judges Rule No. 3.
[Ground (i). According to the Defence Counsel, D/Sergeant Natui said in his evidence that he informed the accused of Legal Aid during the cautioned interview and this is not reflected in PE1. Defence Counsel submits that Judges Rule No. 3 makes it mandatory to contemporaneously record the questions and answers in full and since this question relating to Legal Aid is not recorded, there is a breach of the said Rule.]

14. In light of the entirety of the evidence led in this *Voire Dire*, I have no reason to disbelieve the prosecution witnesses. Thus, I am satisfied beyond reasonable doubt that the cautioned interview tendered as PE1 and the charge statement tendered as PE5 were not made as a result of oppression and they were not obtained in an unfair manner.

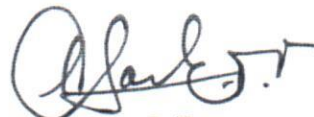
15. I accept the evidence of the prosecution witnesses that the accused did read the cautioned interview before signing.

16. D/Sergeant Natui initially said in his evidence that he informed the accused about Legal Aid but subsequently he said that he only meant Legal Aid when he was explaining the accused about the right to counsel. The accused clearly said in his evidence that

D/Sergeant Natui did not inform him of Legal Aid during the cautioned interview. Therefore, based on accused's own evidence the ground raised by the defence counsel relating to the breach of Judges Rule No. 3 is not founded.

17. In the circumstances, I hold that the cautioned interview of the accused dated 08/04/2010 (PE1) and the charge statement of the accused dated 08/04/2010 (PE5) are admissible in evidence.




Vinsent S. Perera
JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Legal Aid Commission, Suva.