

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 14 of 2015

STATE

v.

EPELI TUTE

Counsel: Ms. S. Tivao with Ms. Navia for State
Mr. K. Vuki and Mr. P. Tawake for Accused

Date of Hearing: 18th July 2016

Ruling: 19th July 2016

R U L I N G

[Voir Dire]

1. The accused challenges the admissibility of his caution interview statement to the police dated 10/11/2014 at Koro community post. The grounds of the challenges are, that the confession was obtained by force, he was assaulted and threatened by police officer Sevu and that he was not taken for medical examination.

2. The burden is on the prosecution to prove beyond reasonable doubt that the confession was made by the accused voluntarily and without oppression. The burden is also on the prosecution to prove beyond reasonable doubt that the statement was obtained without any breach of constitutional rights and that if there were such breaches, there was no resulting prejudice to the accused.
3. State called two witnesses to give evidence. They were, the arresting officer Cpl. 3189 Sevuloni Nakalevu and the interviewing officer PC 4444 Rupeni Koroilagilagi. Defence called accused to give evidence.
4. PC 3189 Sevuloni in his evidence said that he arrested the accused on 10/11/2014. When he went with another officer to arrest the accused and the accused had gone to the farm. When he called the accused, accused had come home. He had then told the accused that he is being taken into custody with regards to a case of Rape. He said that he never assaulted or threatened the accused. He also said that the accused cooperated with the police. The accused was then handed over to the police and he had instructed the Police Constable Rupeni to conduct the interview.
5. He said that none of the police officers assaulted or threatened the accused. Accused had never requested to be taken to Health Centre.
6. After the caution interview and the charge statement was conducted, he has got instructions from the Divisional Crime officer to release the accused on bail as the accused could not be kept for more than 48 hours

and no passage could be arranged for the accused to be brought to the mainland.

7. In cross examination he denied assaulting the accused. He denied assaulting him on his head by fists. He denied that the accused requested to be taken to Health Centre.
8. Referring to the cell book, he said that the accused was brought to station at 16.51 hours on 10/11/2014 and was kept till 15.00 hours next day. Therefore the 3 meals were given to the accused, he said. He denied apologizing to accused for assaulting him.
9. Witness PC 4444 Rupeni has recorded the caution interview statement of the accused. Carbon copy of the interview statement was produced in evidence. He said that in Question 4, when the accused was asked whether he was suffering from any illness, the accused replied 'No'. He said that the accused never requested to be taken to a Health Centre.
10. He said that the accused persons are normally taken to the Health Centre if they have injuries or illness. Accused signed the statement on his own free will, he said. Accused had never complained of any assault.
11. In cross examination he said that the 1st half of the interview was 8 questions and it took 35 minutes. However, the 59 questions in the next half have taken an hour and 20 minutes. He denied the accused being assaulted during the 1st half of the interview.

12. In re-examination the witness said that in the 1st half of the interview he explained the accused all his rights. However, he said that it does not take time.
13. Accused giving evidence said that he was taken to the Koro community post from his farm. He said that he was brought to the police as he was being blamed for rape. Police officer Sevuloni had asked him to admit and make things easier for investigation. When he refused to admit he was punched in his ears, he said. It has been painful, he said. His ear and head had started paining. He said that he was not given dinner and his body was weak. Next day they had told him to admit and make things easier.
14. In cross examination he said that he cooperated with police and police also assisted to get his surety. After he was released he had not gone to the Health Centre. He had not complained to anyone in the village or the Magistrate. When it was suggested that he did not complain to anyone as he was not assaulted he said, 'yes'.
15. In re-examination, he said that he did not go to the Health Centre as he did not have money for transport. However, he said that it was 5 minutes' walk from police station to the Health Centre.
16. Both the police officers, the arresting officer and interviewing officer gave clear and consistent evidence that the accused was never threatened or assaulted. The accused had never requested for him to be

taken to the Health Centre. According to the police officers there had been no reasons for the accused to be taken to the Health Centre.

17. Although the accused says that he was assaulted he did not complain to anyone. He admitted in evidence that he never complained to anyone as he was not assaulted.
18. If the accused was suffering from pain due to the injuries to the ear after assault, he could have easily walked to the Health Centre from the police station after he was released. He admitted that it was a 5 minute walk to the Health Centre from the Police Station.
19. The accused said in evidence that he was not given dinner on the 10th (first night). However, it was not even suggested to the witness police officer that he was not given dinner that night. The evidence was that the accused was brought to the police station at 16.51 hours on the 10/11/2014 and released at 15.00 hours on the 11/11/2014 and therefore 3 meals were rightly given to him.
20. I find the police officers were truthful and forthright when they said that the accused was never assaulted or threatened and that the accused cooperated with the police. There had been no reason or even a request from accused for him to be taken to the Health Centre. I find that it was far from the truth when the accused said that he was assaulted and threatened.

21. I find that the prosecution has proved beyond reasonable doubt that the accused made his caution interview statement voluntarily without any oppression.
22. I hold that the interview statement may be read in evidence.




Priyantha Fernando
Judge

At Suva

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