

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 041 of 2014

STATE

v.

PENAIA DELAI

Counsel: Ms. L. Bogitini with Ms. U. Tamanikaiyaroi for State  
Accused In Person

Dates of Hearing: 05<sup>th</sup> and 6<sup>th</sup> September 2016

Ruling: 08<sup>th</sup> September 2016

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**RULING**

*[Voir Dire]*

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1. The accused Penaia Delai challenges the admissibility of his caution interview statement and the charge statement to the Samabula Police Station. He has urged 13 grounds for *Voir Dire*. In summary the grounds of challenge are that the confession was obtained by force, he was assaulted by arresting police officers including the officer DC Sukulu Colati, he was threatened and that he was refused to be taken to the hospital for medical attention upon his request.

2. The burden is on the prosecution to prove beyond reasonable doubt that the confessions were made by the accused voluntarily and without oppression. The burden is also on the prosecution to prove beyond reasonable doubt that the statements were 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 interviewing officer DC 3476 Sukulu Colati and the witnessing officer Sgt. Lemeki Mawalu. The accused was unrepresented at the Voir Dire inquiry and after the closing of the evidence for the prosecution he opted to remain silent.
4. The interviewing officer Sgt. Sukulu said that he was included in the arresting party as well. He said that on 26/01/2014 five officers including him arrested the accused Penaia Delai at Nakasi road. However, he could not remember the names of the officers other than Cpl. Roy Senibici.
5. The accused had been drinking liquor with 4 others in a nearby bush. He had approached the accused, touched him, informed him the reason for arrest. Accused had said that he did not know anything about this case. Then he had informed the accused that he needs to go now and if he resists he would be charged for resisting arrest. Then the accused was taken to the police station, he said.

6. At the police station the accused was put in the cell block and the accused slept, he said. He said that when the accused resisted to go inside the cell block the officers held the accused with his hands and was pushed inside the cell. He said that the accused was very drunk. He had not noticed any visible injuries on the accused.
7. He said that at no point the accused was physically or verbally assaulted by him or any other officer.
8. He had been the interviewing officer as well. The caution interview statement recorded by him was submitted as Prosecution Exhibit 1 (P1). He said that the interview was held at CID office at 2<sup>nd</sup> floor, and only the accused and the witnessing officer had been present when he recorded the interview.
9. Accused was given his rights and the interview was recorded in English language using a computer, he said.
10. Accused had signed all pages. Interview had taken 2 days as they had had to reconstruct the crime scene and also search the house at Nadonumai. For reconstruction of the scene and search, the witnessing officer had accompanied him.
11. He said that the accused was never assaulted or threatened by him or any other police officers.
12. He had not forced the accused to sign. He had asked the accused whether he had any complaint. He had not notice any injuries on



accused. He said that no police officer assaulted the accused at the police station. At no point, the accused had asked for him to be taken for medical examination, he said.

13. Answering questions put to him by the accused in person, he denied assaulting the accused. He denied that the accused got injured at the police station.
14. When the accused put to him a copy of a medical report, the witness said that the medical report was filled by him and he accepted it.
15. When the Court questioned the witness as to how did that happen when the accused never asked for medical examination, witness said that when the accused was taken to the Magistrate's Court, cell block officers dropped him back to the Samabula Police Station for the accused to be taken to a doctor. However, he said that he did not see any injuries on accused. The medical report was produced as Defence Exhibit No. 1 (D1) without objection.
16. In re-examination the witness said that when the accused was under their control there was no assault. The witness confirmed that he filled the medical report and it was on 30/01/2014. The accused was produced in Court by the police the same day on 30/01/2014, he said. He said that on the face the accused did not have injuries.
17. The witnessing officer Lemeki in evidence said that he witnessed the caution interview statement. He said that only Constable Sukulu who recorded the statement and the accused were there in the room. He

said that the interview statement was hand written by officer Sukulu. He also has signed in all pages. He said that he did not assault the accused. He also said that at no time before, during or after the interview the accused was threatened by police. Accused was never assaulted by police, he said.

18. He said that the officer Sukulu read the interview statement back to the accused. On showing the statement 'P1', he admitted that what is recorded there that accused was given to read it to himself was correct.
19. When he was shown the 'D1' medical report and the injuries recorded, he said that he did not see any injuries on accused. He said that he does not know how those injuries were inflicted.
20. Showing him that the 'P1' was a computer typed statement, he said that now it is being 2 years and that he should have been given the statement before.
21. In cross examination, when the accused suggested that the witness was not there at the interview, he said that at times he was away. He also said that a witnessing officer can leave the interview room when the interview is in process. He said that the witnessing officer is there to coach the interviewing officer. He admitted that he would not know what had taken place when he was not there.
22. The main allegation urged by the accused is that he was assaulted by the police officers, specifically by the officer Sukulu. Both officers



Sukulu and Lemeki testified that the accused was never assaulted by police officers.

23. Although the officer Sukulu repeatedly said that the accused did not make any complain or did not request for medical examination, in cross examination he admitted that the medical report 'D1' was written by him for the accused to be taken to the doctor on 30/01/2014. Accused was arrested on 24/01/2014. According to officer Sukulu's own evidence the accused was taken to the Magistrate's Court only on 30/01/2014. That is after 6 days of arrest. The cell block officers had brought the accused and dropped him back at Samabula Police Station for him to be taken for medical examination.
24. In his evidence in chief, until the accused submitted the 'D1' report in cross examination, witness officer Sukulu did not disclose about the medical report 'D1' knowing very well that the accused was medically examined by a doctor and that the report contained so many injuries on him. In fact the same officer Sukulu had filled the form in 'D1' for the accused to be produced before the doctor.
25. 'D1' report shows injuries on the accused's both inner ears, ears swollen, bruises on the chest. Appendix 1 of the 'D1' report also clearly shows the areas where the injuries were inflicted.
26. The medical officer who examined the accused has opined in (D16) of the report (D1), that the age of the injuries is 2 - 3 days. That clearly shows that the injuries were inflicted on the accused whilst he was in

police custody. The copy record of the Magistrate's Court confirms that although the accused was unrepresented, he had complained to the Magistrate the need for him to get a proper medical report.

27. Although the evidence clearly shows that the injuries caused on accused were caused during the period he was in police custody, the prosecution witnesses failed to explain as to how the injuries were, or may have caused. Both witnesses said that no police officer assaulted him and they did not see any injuries. Medical officer also in D (16) of 'D1' report has concluded that the injuries were caused by assault.
28. In the above premise, I find that the prosecution has failed to prove beyond reasonable doubt that the confessions obtained by them in the caution interview statement and the charge statement were without oppression and they were made by the accused voluntarily.
29. Therefore I hold that the caution interview statement and the charge statement made by the accused to Samabula Police Station in this case are not admissible in evidence.



  
Priyantha Fernando  
Judge

**At Suva**

Office of the Director of Public Prosecutions for the State  
Accused In Person