

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

CRIMINAL CASE NO.: HAC 07 OF 2014

STATE

v

AMI CHAND

Counsel: Mr A. Datt for the State

Mr. V. Pillay for the Accused

Dates of Hearing: 06<sup>th</sup> June, 2017 – 08<sup>th</sup> June, 2017

Date of Ruling : 09<sup>th</sup> June, 2017

RULING ON VOIR DIRE

1. The Prosecution seeks to adduce into evidence the cautioned interview and the charge statement of the Accused recorded at the Ba Police Station.
2. The Accused challenged those documents on the basis that they were recorded in violation of his constitutional rights and subjecting him to various forms of threats and threats of violence, inhuman and degrading treatments. He also says that the whole process was oppressive and and unfair.
3. 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.

4. What I am required at this stage is to decide whether the interview and charge were conducted fairly and whether the accused gave the statements voluntarily. If I find that the confessions were obtained violating their constitutional rights, then I can in my discretion exclude the interviews 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. Altogether 3 police witnesses and a doctor were called by the Prosecution to prove that Accused had given caution statement and charge statement voluntarily. Police officers said that accused were never oppressed, assaulted or threatened during arrest or while they were in police custody and caution interviews and charging took place in a free and fair manner.
7. I find the evidence of Prosecution to be inconsistent and implausible.
8. I am not inclined to believe evidence of police officers to be truthful and therefore not satisfied that accused had given his respective caution statement and charge statement voluntarily. I am also not satisfied that the interview and charging had been conducted fairly and freely.
9. DC Suraj was the investigating officer of the Accused's case. He also arrested and interviewed the Accused. DC 3895 Dhiresh was the witnessing officer for the interview.
10. Both the interviewing officer and the witnessing officer stated that the witnessing officer Dhiresh was present right throughout the interview. However, I am not satisfied that they told the truth. The presence of a witnessing officer at an interview is warranted to ensure that the interview is conducted freely and fairly. It appears that the witnessing officer had not signed the record at all times contemporaneously with the interviewing officer and the Accused (See: after Question 11). It appears from the record of the interview (Q 63-65) and also the

Ba Police Station Station Diary (entry No 61 of 7<sup>th</sup> January 2014) that the witnessing officer had not participated in scene reconstruction. Both these documents contradict the evidence of police witnesses who took part in the interview process.

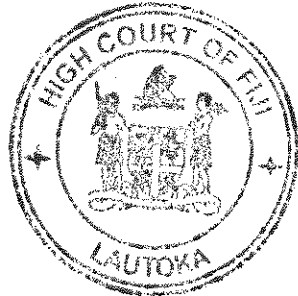
11. DC Suraj has obtained the signature of the Accused on the basis that it was completely read back to the Accused. When it was suggested under cross examination that it was impossible for him to read the interview back to the Accused in 10 minutes, DC Suraj admitted that complete interview was not read back to the Accused.
12. I am not satisfied that the Accused was properly afforded his constitutional rights guaranteed under the Constitution. On 6<sup>th</sup> January, 2014, while the Accused was proceeding in a bus towards the Ba town from Veisaru, on his mobile telephone, he had been informed by DC Suraj that there was a report against him and that he was required at the Ba Police Station. Accused had then accompanied DC Suraj to the Police Station around 2 p.m. D.C Suraj failed to inform the Accused that he was under arrest. The Station Diary indicates that Accused was brought to the police station under arrest. Arresting Officer admitted that he failed to inform the nature of the charge and the reason for arrest promptly.
13. Accused was kept waiting at the Ba Police Station from 2 p.m. to 4.05 p.m. until the interview was started. DC. Suraj said that the Accused was kept in the custody room. The Station Diary is silent as to what transpired at the police Station during this period.
14. At the commencement of the interview, the Accused was informed in the language of his choice (Hind) the nature of the charge and administered the caution in conformity with Judge's Rule No. 2. His constitutional rights guaranteed under the Constitution were explained at the beginning of the interview.
15. The interview was suspended at 5.30 p.m. on the 6<sup>th</sup> January, 2014 and recommenced at 8.20 a.m. on the following day, after a lapse of more than 12 hours. Interview was again suspended at 9.50 a.m. on the 7<sup>th</sup> January 2014 for 10 minutes for the Accused to rest and again at 10.52 for scene reconstruction. It had recommenced after the reconstruction at 11. 27 a.m.. According to the text of the caution interview, Accused had not been cautioned prior to any of these recommencements. DC. Suraj admitted that answers to question 33 onwards

were obtained without a caution. It appears that the Accused had made the confession during this period. Therefore, failure on the part of the interviewing officer to caution the Accused upon resumption of the interview, in my opinion, has been prejudicial to the Accused.

16. Although not specifically raised in *voir dire* grounds, it is the burden of the Prosecution to prove that the Accused was not prejudiced by the failure to give his constitutional rights in the interview process.
17. However, a breach of constitutional rights in itself will not be a ground for exclusion unless the Accused has been prejudiced thereby. Therefore, I delved into the issue of fairness in the interview process and, in the following discussion, I will see if it is appropriate for me to allow the Prosecution to adduce the caution statement in evidence.
18. Accused was 69 years old person at the time of the interview. He was brought to the police station at 2. p.m. on his way to town. He informed DC Suraj that he had not taken his lunch and that he was a heart patient. He also informed that he had a pain in his leg and was under medication. Nevertheless, his interview was taken from 4.05 to 5.30 without him being given anything to eat. Interviewing officer failed to take the Accused to a doctor before the interview so as to satisfy himself that the Accused was medically fit to be interviewed.
19. The charging was concluded at 5.30 p.m. on 7<sup>th</sup> January, 2014. Accused had been taken to a doctor during midnight and was examined by the doctor at 12.25 a.m. on the following day (08<sup>th</sup> of January 2014).
20. According to Section A (4) of the Medical Examination Form, the Accused had been produced before the doctor Lalit as a 'victim'. However, the doctor said that he overlooked the fact that Accused was produced to him as a victim and allowed the police officer to be present in the examination room during medical examination. Accused had not mentioned to the doctor that he was a heart patient although he had complained to police of his heart problem, pains in his leg and neck. Although the doctor said that he did not receive any complaint of police assaults and that the police officer did not interfere with his examination, it can be assumed that the presence of the police officer in the examination room had forced the Accused to withhold some information that would otherwise have been revealed if the privacy expected of the doctor-patient relationship were to be respected.

21. According to the interviewing officer, Accused had been detained in the custody room after he suspended the interview on the 6<sup>th</sup> January, 2104. He is not aware what had happened to the Accused during his 15 hour-long stay in the custody room. According to the meal book, 4 detainees had been provided dinner in that night. It can be assumed that all four people were allowed to sleep in the custody room.
22. Under these circumstances, I am satisfied that the police officers have failed to prove that the interview was conducted fairly and without prejudice to the Accused. I am not satisfied that the Accused who was only a class 2-educated elderly person was not prejudiced by the failure to afford his rights guaranteed under Article 13 of the Constitution.
23. The charging officer DC Aveen testified about the charge he conducted. His evidence is completely unsatisfactory. Having conducted the charge in Hindi, he had translated it in to English and disclosed it to the Defence and to Court. According to English translation, the Accused had said 'no' when he was asked if he wished to make a statement ( Q 14) whereas in the Hindi version, Accused had said 'yes'.
24. Accused had informed DC Aveen that he was a heart patient. However Accused had denied that he was on medication. DC Aveen had not taken trouble to take Accused to a hospital because he had not complained of any pains. This evidence is in contrast with what the Accused had told the interviewing officer a short while ago.
25. According to the English translation, DC Aveen had asked the Accused whether he understood the caution even without cautioning the Accused. He admitted that the English translation is not an accurate translation of the caution interview. He admitted that the original Hindi version is also not accurate. According to Q. 14 of the Hindi translation, he had charged one Ajit Sigh, not Ami Chand, the Accused. Explaining the discrepancy, DC Aveen admitted that he had done a 'cut and paste' tactic. Therefore, allowing the Prosecution to adduce this highly unreliable document will be prejudicial to the Accused.
26. For reasons given, I reject evidence of the Prosecution.
27. I am not convinced that caution and charge statements are voluntarily statements of the Accused recorded in a fair and free interview process.

28. Prosecution failed to prove its case and discharge the burden beyond reasonable doubt. I hold caution statement and charge statement of the Accused to be inadmissible in evidence.



Aruna Aluthge

Judge

At Lautoka

09<sup>th</sup> June, 2017

Counsel:

- Office of the Director of Public Prosecution for State
- Office of Gordon & Company for Accused