

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 149 OF 2016

STATE

-v-

KALAVETI RATU NAWAQAMATE

Counsel : Ms. R. Ude with Ms. S. Navia for the State
Ms. K. Vulimainadave for the Accused

Dates of Hearing : 16, 17 October 2018

Date of Ruling : 17 October 2018

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the caution interview statement and the charge statement of the accused.
2. The accused objects to the admissibility of his caution interview and charge statement on the following grounds:

- i. The accused objects to the admissibility of his caution interview and charge statement.
 - ii. The accused caution interview and charge statement was not read back to him.
 - iii. The accused signature was obtained by trikery/oppression when he was told to sign when it was not read back to him.
 - iv. The accused was intimidated by the Interviewing Officer in the manner she was questioning the accused. The said officer was obnoxious, rude and extremely rude to the accused considering that the accused was a senior citizen.
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 charging were conducted fairly and whether the accused gave the statements voluntarily. If I find that the accused had signed those statements without understanding the contents due to lack of English language proficiency, 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. Prosecution altogether called 4 police officers.
7. Officer Liviana interviewed the accused at the Navosa Police Station on 20th July, 2016 in the presence of witnessing officer Elia. She was also the investigating officer of this case.
8. The witness said that when the accused was brought under arrest he complained of body pains so he was taken to the Health Centre for medical examination. The interview was conducted in the afternoon of the next day when the accused was feeling better.
9. Interviewing officer Liviana said that the accused is her uncle and he was treated well at the police station like a VIP. Accused chose to be interviewed in iTaukei language and in Bauan dialect since he understood Bauan dialect very well.
10. Liviana further said that the accused was not threatened or intimidated. Accused was not promised anything to get a confession. Signature of the accused was not obtained by trickery. Witness said that she took 30 minutes to read the record of interview back to the accused and to explain some parts in Navosa dialect. iTaukei version of the interview was tendered as PE3 and the English translation as PE4.
11. Under cross-examination, the witness said that although the interview was conducted in the Bauan dialect she did speak to the accused in the Navosa dialect for his better understanding. Witness admitted that she did not make a record that further clarifications were done in Navosa dialect. The witness denied that the record of interview was never read back to the accused.
12. The witnessing officer Elia said that the accused preferred to be interviewed in iTaukei language and the record of interview was read back to the accused in the same language. No complaint was received from the accused that he did not understand the contents of the recorded of interview. Elia confirmed that the interview was conducted fairly affording accused's rights and that accused was not tricked or intimidated.

13. IP Belo formally charged the accused. The charge took place at Navosa Police Station on 21st of July 2016, in the presence of the witnessing officer Dokoni. IP Belo said that the accused appeared healthy before the charge. He received no complaints from the accused. Accused wished to be charged in the iTaukei language. The witness said that the accused read the charge statement and it was also read back to him. Accused gave the charge statement voluntarily. Witness said that the accused is his uncle. Witness tendered the charge statement (PE1) and its English translation (PE2) and he read the same in evidence.
14. Under cross-examination, the witness denied that he had never read the charge statement back to the accused. He admitted that the contents of the charge statement were explained to the accused in the Navosa dialect and he said that the accused knew the Bauan dialect very well.
15. IP Dokoni witnessed when the accused was being charged. The witness said that the accused was charged in the iTaukei language and in the Bauan dialect which was preferred by the accused. Accused did not complain that he did not understand the charge. Considering his age, the accused was treated very well in the police station, like a father.
16. Under cross-examination, the witness said that the Navosa dialect and the Bauan dialect are not much different to each other altogether. He said that the only difference between the two is 'j' or 'h', and otherwise both are the same.

Analysis

17. Police officers are consistent in their evidence. The lengthy cross examination could not discredit the version of the Prosecution. The evidence that the accused understood the contents of the interview and charge statement is acceptable and believable.

18. The accused had preferred iTaukei- Bauan dialect to be interviewed and charged. He had signed acknowledging that he preferred that dialect. Police officers had not received any complaint from the accused that he did not understand Bauan dialect.
19. The accused is related to the police officers who had charged and interviewed the accused under caution. The accused is an uncle of the interviewing officer. She said that the accused was treated like a VIP at the police station. They are from the same area and spoke the same dialect. The evidence that there is no big difference between Bauan dialect and Navosa dialect was not challenged. Even though the interview and charge were conducted in Bauan dialect, some parts of the record had been explained in Navosa dialect for his better understanding.
20. It is hardly believable that the accused could not understand the contents of the interview and the charge. The interviewing officer had taken 30 minutes to read the record back to the accused. Accused had been given an opportunity to add and alter the contents of the interview.
21. I am certain that the accused was treated well and he understood the questions put to him and the contents of the record of interview and the charge statement, before he signed those documents.

Conclusion

22. Prosecution proved beyond reasonable doubt that the accused's confessions were obtained voluntarily and fairly. I hold caution interview statement and charge statement to be admissible in evidence.


Aruna Aluthge

Judge

At Lautoka
17th October, 2018

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