

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 287 of 2017**

**STATE**

**v.**

**NEMANI MUSUDOLE**

**Counsel:** Ms. L. Bogitini for State  
Mr. F. Vosarogo for Respondent

**Hearing:** 26<sup>th</sup> February 2018

**Ruling:** 27<sup>th</sup> February 2018

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**RULING**  
**[Voir Dire]**

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1. The Prosecution proposed to adduce the caution interview of the Accused in evidence at the hearing, for which the Accused objected on the following grounds, *inter alia*:
  - i) *That he was not given his right to consult his parents, guardians or relatives during his caution interview.*
  - ii) *He was not given the opportunity to read over his caution interview at the completion of his interview and was only told to sign it.*
2. The prosecution adduced the evidence of the Interviewing Officer during the course of the voir dire hearing. The Accused opted not to give evidence. Subsequently, the learned counsel for the Prosecution and the Defence made their respective oral submissions. Having carefully considered the grounds of voir dire, the evidence adduced during the

hearing and the respective closing submissions of the parties. I now proceed to pronounce my ruling as follows.

### The Law

3. The Privy Council in Wong Kam – Ming v The Queen (1982) A.C. 247 at 261 has discussed the basic control over admissibility of the confessionary statement made in the caution interview, where it was held that:

*"The basic control over admissibility of statement are found in the evidential rule that an admission must be voluntary i.e. not obtained through violence, fear or prejudice, oppression, threats and promises or other improper inducements. See decision of LORD SUMNER in IBRAHIM v. R (1914-15) AER 874 at 877. It is to the evidence that the court must turn for an answer to the voluntariness of the confessions."*

4. The Fiji Court of Appeal in Shiu Charan v R (F.C.A. Crim. App. 46/83) has discussed the applicable test of admissibility of caution interview of the accused person in evidence at the trial. The Fiji Court of Appeal in Shiu Charan (supra) held that:

*"First, it must be established affirmatively by the Crown 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 Pin Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v*

*Sang (1980) AC 402, 436 @ c - E." (State v Rokotuiwai - [1996] FJHC 159; HAC0009r.95s (21 November 1996)."*

5. The Fiji Court of Appeal in Fraser v State ([2012] FJCA 91; AAU24.2010 (30 November 2012)) held that:

*"The court shall not allow a confession to be given in evidence against him unless the prosecution proves beyond reasonable doubt that the confession was not obtained (a) by oppression of the person who made it (b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in consequence thereof."*

6. Accordingly the court is first required to satisfy that the statement in the caution interview had been taken without any forms of force, threats, intimidation, or inducement by offer of any advantage. Even though the court is satisfied that the statement was given voluntarily without any forms of threat, force, intimidation or inducement, the court is further required to determine whether any general grounds of unfairness existed before, or during the recording of the caution interview, that could render it inadmissible in evidence.
7. It is the anus of the prosecution to prove beyond reasonable doubt that the caution interview of the accused was recorded voluntarily and under fair and just circumstance.

#### Analysis

8. In view of the evidence given by the Interviewing Officer, the accused was asked at question number 63 whether he wish to read the record of the interview. The accused had replied that he does not want to read it, as he was reading it while it was being typed. The Interviewing Officer then concluded the record of the interview and escorted the accused back to the cell. He had to find papers to get the record of the caution interview printed. According to the evidence given by the Interviewing Officer, there were no other officers

present at the Police Station as all of them have gone to attend to another crime investigation. He finally got the printout of the caution interview around 5 pm and gave it to the accused, who was locked in the cell, to sign. The accused then signed it, but he did not read it before he put his signature.

9. The learned counsel for the accused in his closing submissions stated that the prosecution has failed to provide a guarantee that the same record of the caution interview that was concluded at 2.55 pm was actually given to the accused at 5 pm to sign.
10. During the course of the hearing, the defence did not provide any evidence to suggest there was a possibility that the record of the interview, that was recorded in the personal computer of the interviewing officer, would have been changed before it was printed out and given to the accused to sign. Neither the learned counsel for the Defence suggested such a proposition to the Interviewing Officer, when he gave evidence.
11. The Interviewing Officer specifically stated that he gave the accused his rights and explained to him that if he wishes he could consult a private lawyer or a lawyer from Legal Aid Commissions. The accused was further explained that he could consult his parents, guardians or relatives if he wishes to do so. The Accused had informed the Interviewing Officer that he does not wish to exercise that right.
12. I am mindful of the fact that the accused was given the printout of the caution interview to sign after nearly three hours it was concluded. However, as per the question and answer number 63, the accused had informed the Interviewing Officer that he does not wish to read the record, as he read it while it was being typed. There is no evidence or anything to suggest that the record of the interview would have been altered or changed before it was printed out.
13. In view of these reasons, I do not find that the delay in signing the record of the caution interview by the accused has caused any unfairness, rendering the caution interview inadmissible in evidence.

14. In conclusion, I hold that the record of the caution interview of the accused is admissible in evidence at the trial.



  
R.D.R.T. Rajasinghe  
Judge

At Suva  
27<sup>th</sup> February 2018

Solicitors  
Office of the Director of Public Prosecutions for the State  
Mamlakha lawyers for Defence