

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC (FICAC) 1 OF 2014

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION (FICAC)

V

ROHINESH RANJAN PRASAD

Counsel: Ms. S. Datt for FICAC

Accused in Person

Date of Hearing: 3rd May, 2018

Date of Ruling: 3rd May, 2018

RULING ON VOIR DIRE

1. At pre-trial stages, the Counsel for Prosecution informed court that the Prosecution will be relying on the caution statement of the Accused, and that there are no issues on *voir dire*. The Accused was represented by two counsel at pre-trial stages, one after the other. None of the Counsel informed Court that the Accused intended to challenge the caution interview nor had they filed any grounds for *voir dire*. On that basis, the court straight away proceeded to trial proper.

2. By the time the trial started, both counsel for Defence had withdrawn. The Accused was unrepresented although he was given ample time and opportunity to retain a new counsel. As a former police officer, Accused opted to defend the case himself. When the last witness for Prosecution IP Iqbal was giving evidence, the Accused informed court that he would challenge the caution interview. Since there are admissions in the caution interview, the Court, in the interest of justice and fair trial, decided to hold a trial within trial to determine the admissibility of the caution interview.
3. When the Court asked the Accused to disclose his grounds for *voir dire*, the Accused informed the following:

“When I was getting arrested by the investigation officer,

 - I. *I was told that there was a video recording against me and thereby I was misled emotionally and emotionally black mailed.*
 - II. *I was given a promise by the investigating officer that if I admit the offence I would receive a jail term just for 6 months or 1 year but if I do not admit, I would receive a jail term of 10 years”.*
4. The test of admissibility of all admissions 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.
5. 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 signature of the Accused was obtained by the FICAC official by trickery or giving a promise, then I hold in my discretion exclude the interview.
6. 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.

7. Now I look at the evidence presented at the trial within trial.
8. Prosecution called the investigating Officer IP Iqbal as their only witness for Prosecution. Witness said that he interviewed the Accused in English, the preferred language of the Accused and that he was explained his constitutional rights including the right to counsel and right to remain silent. The interview was conducted fairly and was witnessed by a witnessing officer. Accused was given enough breaks, food and other facilities. No complaint was received from the Accused during or after the interview.
9. The witness said that the Accused was never given any promises or that he was tricked to obtain admissions. Accused gave his admission voluntarily. An audio visual recording was also done whilst conducting and recording the caution interview on computer. At the end of the interview, Accused read the record and signed it voluntarily acknowledging the contents.
10. Under cross-examination, the witness said that he had no idea if Accused's relatives had come to visit him while he was detained at Lautoka Police Station. He denied telling the Accused that he had video recording evidence against the Accused.
11. Accused gave evidence for Defence. He said that the investigation officer came to his house and informed his parents that it was a small case and he was taking the Accused to get a statement. He was just asked to get in the vehicle but not formally arrested. He was not informed of the offence. As the vehicle moved, the investigation officer, without even explaining the charge, informed him that there is video recording evidence against him and he should plead guilty.
12. Accused said that he knew that the investigating officer was from FICAC because he was a good friend of his father who was a former police officer.
13. At the police station, he was not allowed to call any of his relatives. He was not allowed to have a shower. He even lodged a complaint in the diary.

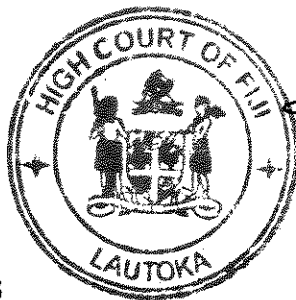
14. Under cross-examination the Accused said that he started the service with the Fiji Police Force in 2005. His father is a retired police inspector. He had no idea how long his father served in Fiji Police Force.
15. He admitted that, being a former police officer, he was well aware of his rights as a suspect under arrest. He denied having admitted to FICAC that he received \$ 300 from the taxi driver.
16. Accused admitted that he was not threatened by FICAC officers; however, he said that he was manipulated. Accused said that FICAC officer pretended to help him to set up a defence because the officer knew his father; he did not know at that time that he was being tricked.
17. Accused admitted that he had retained two lawyers and instructed them about the caution interview. He said that he instructed the lawyers to challenge the caution interview and file *voir dire* grounds. However, they had not done that.
18. Accused admitted that, being ex-police officers, he and his father knew as to how to complain higher authorities if his rights were violated or he was wrongly implicated.
19. He said that FICAC Officer told him that, there is a video of him receiving money, so he just merely believed that and accepted that fact.


Analysis

20. Evidence of the investigating officer IP Iqbal is consistent, believable and therefore, acceptable. According to the Accused, IP Iqbal is a good friend of his father. I do not see any reason why IP Iqbal would want to falsely implicate the Accused in a bribery allegation.
21. Accused is a former police officer. His father also retired from Fiji Police Force. They are well aware of police procedures and complaint procedures. If Accused's rights were violated by the investigator it can be assumed that they will report to some authority. However Accused admitted that he or his father had never made a complaint to any authority or the magistrate.
22. If the Accused was given a promise or he was tricked, he would have advised his Counsel to challenge the caution interview and file *voir dire* grounds. However,

none of the counsel had informed court that Accused would challenge the caution interview or file *voir dire* grounds. The Court can only assume that counsel acted in such a way because the Accused had no complaints or issues with his caution interview.

23. Accused while admitting receiving \$ 300 from the taxi driver, had given excuses and explanations. He was basically denying the bribery allegation and putting forward a defence. It is implausible that an investigating officer at the caution interview would ever help him set up a defence. If he was promised leniency or tricked, it can be assumed that Accused would not have set up a defence in his caution interview.
24. Accused admitted that he read the record of caution interview before he signed it. He was an experienced police officer. It cannot be assumed that he made admissions merely because he was told that there was video evidence. He could have challenged such evidence and refused to make admissions.
25. I am satisfied that Accused was not telling the truth in Court. He failed to challenge unshaken evidence of the Prosecution. He failed to create any doubt in prosecution evidence. Prosecution proved that the caution interview was conducted fairly affording his constitutional rights. There is no evidence that the Accused was tricked or promised an intensive to make admissions.
26. I hold the caution interview of the Accused admissible in evidence.




Aruna Aluthge
Judge

3rd May, 2018
At Lautoka

Solicitors: Fiji Independent Commission Against Corruption for Prosecution.
Accused in Person.