

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

**Criminal Case No. HAC 05 of 2016**

**STATE**

**v**

**NAVINESH NIRMAL PRASAD**

**Counsels:** Mrs. D. Kumar for the State  
Mr. A. Sen for the Defendant

**Dates of Hearing :** 16, 17 July 2018

**Date of Ruling :** 17 July 2018

**RULING**  
**(Voir Dire)**

1. The defendant by his Counsel makes application to have the record of an interview he made at Seaqaqa Police Station on the 7<sup>th</sup> and 8<sup>th</sup> February 2016 ruled inadmissible as evidence in his trial on illicit drug related matters, a trial about to commence in this Court.

2. His amended grounds of objection pray 13 separate grounds, a “scatter gun” approach to the application. Apart from an allegation of assault on arrest, the remaining grounds centre around the conduct of the interview, the complaints being that he was threatened to make the admissions that he did, that he was not afforded his constitutional rights; that he was not provided with appropriate meals, and that his detention was in a cell unfit for human habitation and with no provision of suitable bedding.
3. The test in assessing whether the record of interview is admissible or not is whether it was made voluntarily, whether it was made without oppression and in all fairness and that it was not obtained in breach of his constitutional rights. The burden of proving whether it was voluntary, fair, not oppressive and in accordance with his rights rests on the Prosecution and that burden remains on the State throughout. The standard of proof is proof beyond reasonable doubt.
4. I have kept these tests and the requisite standard foremost in my mind when assessing the evidence surrounding the generation of the record.
5. In the case for the State, the prosecutrix called 7 Police witnesses. They told of the raid on the home of the accused around day break on the 7<sup>th</sup> February 2016, of the search of his house with items of interest found and then of the trek on foot to two sites of suspected cultivation, led by the accused. Officers then spoke of the delivery of the accused to Seaqaqa Police Station for further enquiries including the interview under caution, the record of which is the subject of the present proceedings.

6. The amended grounds of appeal make only one serious allegation with relation to the time of arrest and search and that is that two named officers assaulted the accused at the time of arrest and while he was in custody. The officers so named denied having committed such an assault and moreover Counsel for the accused resiled from this allegation at trial. He raised an allegation of assault by yet another very senior named officer, an allegation not contained in the grounds of objection. This senior officer also denied the assault.
7. At the hearing, further grounds of objection relating to the arrest and search were raised in cross examination and by the accused in his evidence, grounds such as the failure to caution the accused and to advise him of the offence(s) he was suspected of having committed. These two were denied and smacking of recent invention were discarded from my mind on coming to my finding in this enquiry.
8. The officer taking part in the interview and recording the questions and answers gave evidence along with the witnessing officer. Both told the Court of the co-operative demeanor of the accused in the interview and denied the allegation that they "threatened and induced" the accused.
9. They insisted that he was afforded his constitutional rights. They deposed that he was provided with appropriate meals, and denied that his incarceration was in a cell unfit for habitation. The Court was told that the cell was cleaned twice a day and the accused was provided with a foam mattress, a sheet and a pillow. Washing and shower facilities were nearby and available.
10. The accused gave evidence and called his Mother as his sole witness.

11. The accused told the court that he was asleep when the police party arrived at his house in the early morning of the 7<sup>th</sup> February 2016. When he opened the door he saw about 10-12 officers and Cpl. Harnam ("CH") was at the door. CH said nothing but pushed the accused away and entered the house. CH pushed him to the wall; hand cuffed him and made him sit on the sofa. Still nothing was said to him. He wasn't told he was under arrest and he wasn't told why the Police Officers were there. Some officers went into his room searching for something. He was told something was found, was called to the door of the room and being shown an exhibit was asked what it is. He said he had no idea what it was. Bhawan Singh a senior officer then slapped his face twice, held his neck and pushed him against the wall. Bhawan said "You are a liar and a bastard". The accused said he was angry. He was then taken to the sitting room and told that they were going to take him to a place. They took him outside, still handcuffed. In saying that they would take him to another place they made him walk bare foot refusing to let him wear flip flops. They took him about 1.5km on a jungle path. When arriving at a place, the Police release one of his hands and told him to point out some plants. They took him to a second place where he was punched in the stomach and kicked in the back. He was crying in pain. At that second place they made him stand among plants when a lady officer took photographs.
12. From there they took him back to the station at Seaqaqa where he placed in a cell. He was not given breakfast nor the chance to wash. He was told that he had to admit anything he was told by the Police and if he didn't he would be assaulted and they would rub chillies on him. He was scared.

13. He was interviewed in the English language despite the accused telling them that he would prefer to interview in Hindi. He wasn't told what the questions were and the answers are not his. A group of officers surrounded him at times threatening him to give the answers he was told to give. He was not allowed to see a lawyer.
14. The interview was suspended on the first day at 1pm. He was given lunch and put in his cell until the following day. He had bedding and the conditions of the cell were "O.K."
15. On resumption of the interview the following day, he was not reminded of his rights and he was not feeling well.
16. It was read back to him in English, which he did not understand. He was forced to sign it.
17. The accused called his mother in Defence. She confirmed that the accused was not given a chance to talk when "arrested"; the Police were doing all the talking. They slapped him twice and pushed his head against the wall He denied knowing anything about an item found in his bedroom. She was unable to make contact with her son on February 7<sup>th</sup> and on the 8<sup>th</sup> February she went to Seaqaqa to visit him but she was not permitted to see him

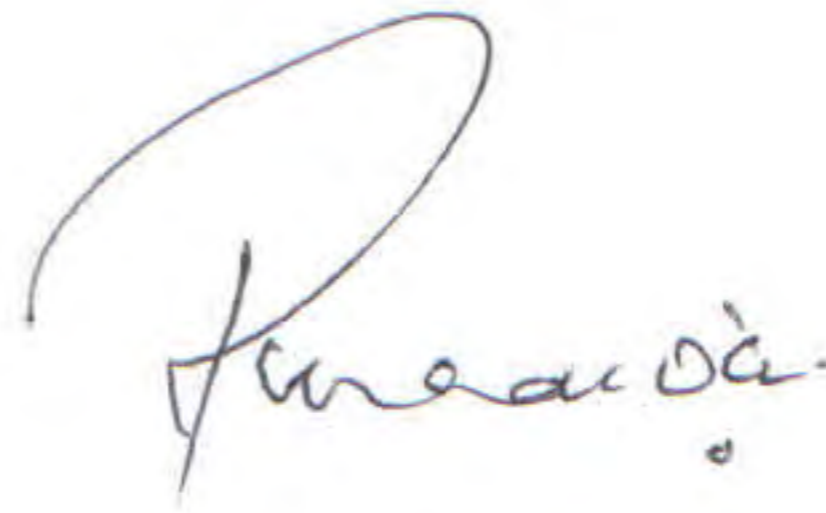
**Analysis:**

18. The Police gave evidence which I accepted as true and correct. There were inconsistencies about the time of arrival and about where the accused was during the house search, but these inconsistencies did not reflect on the creation of the interview

under caution. A tribunal would be suspicious of evidence which is totally consistent. I find that I can rely on the testimony of the officers and I believe them when they tell me that there were no improprieties occasioned to the accused.

19. In contrast I cannot believe the evidence of the accused or his witness (his mother). I am cognizant of the fact that the accused does not have to prove anything; the burden of proof remaining on the State, but nothing he said made me doubt the evidence of the prosecution witnesses.
20. The 13 amended grounds of objection originally filed in Court did not reflect the claims that the accused made in Court before me. He resiled from his written allegation of assault and told the Court of other assaults perpetrated on him. Details of these assaults were raised for the first time in his evidence and never heard of before. I did not believe him. I did not believe his claim that his English was poor and as a result the interview in that language was unfair. The Court noted that he was well able to respond appropriately to questions in English from the bench.
21. The evidence of the mother, that she saw the assault in the house was also unbelievable. The accused has been on bail, living with her until this very day and the possibility of collusion is apparent.
22. I believe that the accused was afforded his constitutional rights and the circumstances surrounding the arrest, search and interview all lead to an indubitable conclusion that he was acting and speaking voluntarily at all times.

23. I find that his cautioned interview was conducted in all fairness with the co-operation of the accused and the record of that interview may be led in evidence by the prosecution.



**P.K. Madigan**

**Judge**



At Labasa

17 July 2018