

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 124 OF 2016

STATE

-v-

OSEA CAWI

Counsel : **Ms S Navia for State**
: **Ms K Vulimainadave for Accused**

Dates of Hearing : **11 September, 2018**

Date of Ruling : **11 September 2018**

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the caution interview statement and the charge statement of the Accused, Osea Cawi, made at the Sigatoka Police Station on 8th and 9th of June, 2016 respectively.
2. The accused objects to the admissibility of his caution interview and charge statement on the following grounds:
 - I. (a) That the caution interview is not a true and correct reflection of the answers given to the interviewing officer on the day of the interview.
 - (b) That the accused was not asked if he clearly understood the English language as he only understood the iTaukei language and as such did not understand the entirety of his caution interview and charge.
 - II. The above was a breach of his constitutional rights that are protected under the 2013 Constitution Section 13 (1) (a).

3. Ground 1 (a) above is not an admissibility issue. The issue whether the caution interview had been fabricated by police officers is a matter for the assessors and court to decide at the trial proper. Therefore, I do not intend to deal with that ground in this Ruling.
4. 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.
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 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.
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. At the hearing, Prosecution called 3 witnesses, the interviewing officer WDC Kelera Ulumatua, witnessing officer, PC Trevor and charging officer, Cpl. Baseisei.
8. WDC Kelera conducted the interview of the accused Osea Cawi at the Sigatoka Police Station on the 08th of June, 2016, in the presence PC Trevor who was the witnessing officer.
9. Interviewing officer Kelera said that accused appeared physically good and was very cooperative in the interview. Interview was conducted in English language as requested by the accused. No complaint was received from him. Osea was not threatened or assaulted. No promise was given to him to obtain a confession. She said that all 50 question were answered by Osea voluntarily. Osea read the interview before signing and acknowledged that he preferred English as the medium of interview. Witness tendered the hand written interview marked as PE 1B and the English translation as PE 1A.

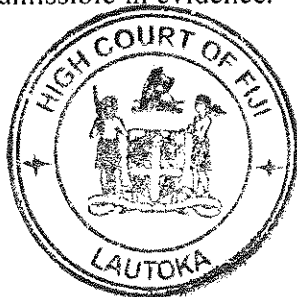
10. Under cross-examination she denied that she was speaking to the accused in Nadroga dialect and not in English. She also denied that questions and answers were all done in the Nadroga dialect.
11. The witnessing officer, PC Trevor and charging officer, Cpl. Baseisei confirmed interviewing officer's evidence that the accused was fluent in English and that he gave the interview voluntarily.


Analysis

12. I find that the evidence of the Prosecution to be consistent and plausible.
13. Police officers are consistent in their evidence. Inconsistencies between the record of interview and entries of the Station Diary are not material because the entries had been made by a different officer. I can believe the evidence of the Prosecution that the accused understood the contents of the interview and charge statement before he signed.
14. The accused had gone to Kavanagasau Secondary School where the medium of instructions is English. He had dropped himself out from school after completing Form 4. He has received an English education for a considerable period of time.
15. Accused has signed the acknowledgement that he preferred English.
16. It is hardly believable that the accused could not understand the contents of the interview. The accused had taken 20 minutes to read the record before he was asked to sign. He had been given an opportunity to add and alter the contents of the interview.
17. I am certain that the accused is fluent in English so that he could understand the questions put to him and the contents of the record of interview and also the charge statement which he had signed voluntarily.

Conclusion

18. 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
11 September 2018

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