

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case. No. HAC 45 of 2019

BETWEEN : **THE STATE**

A N D : **SIMISEI QOLI**

Counsel : Mr. T. Tuenuku for the State.
Ms. G. Henao for the Accused.

Dates of Hearing : 23 and 24 September, 2020

Date of Submissions : 24 September, 2020

Date of Ruling : 25 September, 2020

VOIR DIRE RULING

1. The accused is charged with one count of sexual assault contrary to section 210 (1) of the Crimes Act and one count rape contrary to section 207 (1) (2) (b) and (3) of the Crimes Act.
2. The prosecution wishes to adduce in evidence at trial the caution interview of the accused and the charge statement respectively dated 26th February, 2019.
3. The accused objects to the admissibility of the caution interview and the charge statement on the following grounds:
 1. *When he was arrested he was not informed of the reasons of his arrest;*

2. *His rights were not explained to him before and during his caution interview and the charging;*
 3. *Throughout his caution interview and charging when he denied the offence, he was forced by officer Jese and other Police Officers to admit to the offence.*
 4. *He was also told by Officer Jese that if he admits to the offence he will receive a lenient sentence.*
4. The prosecution denies all the allegations raised in the voir dire grounds. The burden is on the prosecution to prove beyond reasonable doubt that the caution interview and the charge statement of the accused was conducted fairly under just circumstances, the answers were given voluntarily, lack of prejudice, lack of oppression and in compliance with the Fijian Constitution where applicable. In this ruling the above principle of law has been kept in mind throughout.

LAW

5. The Court of Appeal in *Ganga Ram and Shiu Charan vs. R, Criminal Appeal No. AAU 46 of 1983* outlined the following two tier test for the exclusion of confessions at page 8 in the following words:

“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 which has been picturesquely described as “the flattery of hope or the tranny of fear” Ibrahim v R (1914) AC, 599; DPP v Ping Lin (1976) AC 574.

Secondly, even if such voluntariness is established there is also a need to consider whether the more general ground of unfairness exists in the way in which police behaved, perhaps by breach of the Judge’s Rules falling short of overbearing the will, by trickery or by unfair treatment. R v

Sang (1980) AC 402; 436 at C-E. This is a matter of overriding discretion and one cannot specifically categorise the matters which might be taken into account.”

6. The Constitution of the Republic of Fiji at sections 13 and 14 have recognised and endorsed the above mentioned principles as well.
7. It is for this court to decide firstly, whether the caution interview and the charge statement of the accused was conducted freely and fairly without any threats, assault, inducements or any improper practices by the persons in authority namely the police officers who were involved in the interview and the charging of the accused and that he had voluntarily given his answers on his own freewill.
8. Secondly, if there has been oppression or unfairness then this court can in its discretion exclude the interview and the charge statement. Further if the accused common law rights have been breached then that will lead to the exclusion of the confession obtained, unless the prosecution can show that the accused was not prejudiced as a result of that breach.

PROSECUTION CASE

9. The prosecution called three witnesses to prove that the caution interview and the charge statement of the accused were properly conducted by the police officers during investigation.
10. The first witness Cpl. 3833 Jese Marovia informed the court that on 26th February, 2019 he had interviewed the accused in the ITaukei language. Before the interview commenced the officer had explained to the accused his right to consult any solicitor of his choice or any member of his family or church to be present. The accused understood his right but did not wish to exercise the same.
11. The caution interview was conducted at the Vatukoula Police Station, the officer had signed and the accused had also signed the interview. Woman

Corporal Makelesi was noted to be the witnessing officer who was only present for a while because she had to leave to attend to other matters. In effect there was no witnessing officer present throughout the caution interview.

12. At question 9 of the caution interview (ITaukei language) the accused was explained the allegation and then cautioned which he understood and acknowledged. The accused was also informed that he will not be forced or ill-treated and at the end of the interview the accused was given the opportunity to correct or alter his caution interview but he did not wish to do so.
13. The witness did not threaten or make any false promises to the accused for him to answer the questions asked. The witness knows the accused personally and he treated the accused like a father.
14. The caution interview of the accused dated 26th February 2019 in the ITaukei language was marked and tendered as prosecution exhibit no. 1 and the English translation was marked and tendered as prosecution exhibit no. 2.
15. The witness also stated that it was his mistake that answer to questions 39 and 41 in the English translation prepared by him were still in the ITaukei language. When the accused came to the police station he had arrested the accused who was able to understand the reasons for his arrest. The accused did not make any complaints to the witness about his arrest. According to the witness the other police officers at the Vatukoula Police Station did not force or ill treat the accused at any time.
16. In cross examination when it was suggested that the accused was arrested by other police officers and he was not told of the reason why he was arrested, the witness replied he had informed the accused at the beginning of the caution interview and also at the time of arrest he had informed the

accused about the reasons for his arrest. The witness agreed he had failed to record the time the interview had concluded which was also not stated in the station diary.

17. When it was put to the witness that since the accused was educated up to class 6 he did not understand the rights given to him, the witness stated that he had explained the rights to the accused in the ITaukei language who had understood and signed.
18. The witness agreed that there was no witnessing officer present during the caution interview and he did not force the accused to admit the allegations. The witness denied that he had informed the accused if he admitted the allegations he will get a lenient sentence according to the witness he was not a judge to do so. The witness stated the accused had admitted to the allegations on his own freewill. During the caution interview and the charge of the accused only three police officers were in the Police Station.
19. In re-examination the witness stated that the three police officers present in the police station were Corporal Makelesi, Charging Officer PC Apisalome and the witness.
20. Woman Sergeant Makelesi Ranadi informed the court that in 2019 she was the Crime Officer based at Vatukoula Police Station. On 26th February, 2019 she had instructed Cpl. Jese Marovia to be the interviewing and the investigating officer in this case.
21. According to the witness she was supposed to be the witnessing officer for the caution interview of the accused, however, as the interview started she had to leave the police station due to lack of manpower to attend to some other work since she was the only female officer present. When she came back she met the accused who did not make any complaints to her.

22. In cross examination the witness confirmed that she was not present during the entire interview and she had not asked the accused if he had any complaints about anything when she came back to the police station.
23. The final witness Police Corporal Apisalome Raburau informed the court that he was the charging officer in this case. The accused was charged in the ITaukei language in 26th February, 2019. The charge statement in the ITaukei language was marked and tendered as prosecution exhibit no. 3 and the English translation prepared by this witness was marked and tendered as prosecution exhibit no.4.
24. The witness did not force the accused to make admissions in the charge, Corporal Jese was present but Corporal Jese did not force the accused to make any admissions in the charge. The witness had signed the charge statement and the accused had signed as well.
25. The witness had properly explained the allegations to the accused which he understood. There was no force on the accused to sign the charge statement by the witness or any other police officer.
26. In cross examination the witness stated that the caution interview of the accused was not conducted in a separate room but in the open space at the police station. The witness denied any of the police officers had forced the accused to admit the allegations. The witness stated he had asked the accused if he had any complaints at question 7 of the charge statement in the words "*do you wish to say anything*" to which the accused had responded.
27. This was the prosecution case.

DEFENCE CASE

28. At the close of the prosecution case the accused opted to give evidence on oath.

29. The accused informed the court on 26th February, 2019 he went to the Vatukoula Police Station after he heard that there was a report lodged against him. At the police station he met police officer Jese after waiting for some time he was interviewed by Jese at the place where he was seated.
30. Jese was sitting at the table and asking questions when the allegation was put to him he denied. Jese got angry and told the accused when he appears in court then he should inform the court. The accused told Jese all that he had done on Monday 25th.
31. When the accused did not admit the allegations put to him, Jese got furious, he was about to punch the face of the accused, both started arguing, after this Jese placed a document in front of him and forced him to sign and said *"You just admit to the allegations and you will get a lenient sentence"*.
32. Upon hearing this, the accused relied on the words of Jese and thought what was told to him was true since he does not know the law and he is not that literate. The accused was not explained the document but he knew if he signs he will be admitting to the allegations despite this he signed.
33. The accused did not make any complaints to any of the police officers who were present at the police station since he was scared they would ask him questions and he would not know what to tell them.
34. When he was escorted to court by police officers he did not complain about anything and also he did not complain to the Resident Magistrate at Rakiraki Magistrate's Court.
35. In cross examination the accused agreed that when officer Jese told him about the report against him he knew the reasons why he was going to be

interviewed. The interview was in respect of the allegations raised by one Tavaita Vunisa which was relayed to the accused by officer Jese.

36. The accused knows officer Jese because they usually drink grog together when he goes to the police station. The accused at times went to the police station to drink grog with the police officers. He has a traditional relationship with officer Jese and as a result of this relationship Jese was talkative and he was talkative as well. The accused had preferred to be interviewed in the ITaukei language so the questions asked were understood by him Jese did not make up his answers.
37. Furthermore, when the accused was giving his answers, Jese did not force or threaten or make any false promises to him to give the answers. The accused had given his answers voluntarily. He knew by signing the caution interview he was admitting to the allegations. The accused recognized his signature in the caution interview.
38. The accused agreed he did not make any complaint against Jese because he was not ill-treated by Jese, and there was nothing to complain about.
39. According to the accused he was forced by Jese to sign the interview who was insisting that he signs and he knew if he signs he would get a lenient sentence, but he was treated well by Jese when he was interviewed.
40. In re-examination the accused agreed that he was aware of the document he was signing. Upon questioning by the court the accused agreed that he was charged after the caution interview. When questioned by the defence counsel the accused did not make any complaints to the charging officer regarding how he was questioned by the interviewing officer.
41. This was the defence case.

42. After the hearing, both counsel filed written submissions for which this court is grateful.

ANALYSIS

43. The prosecution wishes to rely on the confessions obtained by the police during the caution interview and charging, however, the accused is objecting to its admissibility of these documents as per the voir dire grounds filed.
44. The objections raised by the accused are directed to his caution interview and the charge statement. The law is very clear that the prosecution bears the burden to prove beyond reasonable doubt that the confessions were given by the accused voluntarily on his own freewill in fair and just circumstances without any breaches of his Constitutional Rights.
45. There is no dispute that the accused was caution interviewed on 26th February, 2019 in the iTaukei language at the Vatukoula Police Station.
46. The caution interview was conducted by Cpl. Jese Marovia, who says the accused was given all his rights in the iTaukei language which he had understood and signed. There was no witnessing office due to lack of manpower in the police station.
47. The interview had taken place in the full view of all the police officers, the interviewing officer did not force the accused to admit the allegations he did so on his own freewill. The interviewing officer knows the accused and treats him like a father. There was no force or pressure put on the accused to admit to the allegations.
48. The charging officer had also carried out the charging of the accused after giving him all the rights which he understood. The accused signed the charge statement on his own freewill without any force from anyone

including the charging officer. The prosecution submits the caution interview and the charging were conducted in an open area in the police station and therefore it is not possible for anyone to force or pressure the accused.

49. On the other hand, the defence stated that the accused was forced to sign the caution interview because the interviewing officer had shown aggression by being angry at the accused when he denied the allegations. Furthermore, the interviewing officer had told the accused to admit the allegations and he will get a lenient sentence. The accused relied on this representation by the interviewing officer and admitted to the allegations. As a result the accused did not voluntarily admit the allegations in the caution interview which should be disregarded.

CONCLUSION

50. After considering the evidence adduced by the prosecution and the defence and the submissions of the counsel this court is satisfied beyond reasonable doubt that the accused had given his answers in the caution interview and his charge statement voluntarily without any threat or pressure or force or false promise by the interviewing or the charging officer. The accused did not make any complaints about the behaviour of the interviewing officer to any of the police officers who were at the police station or when escorted to the Magistrate's Court or to the Resident Magistrate or to the charging officer. In his evidence the accused did not mention anything against the charging officer.
51. The accused told the court that he knew the interviewing officer personally and he was not ill-treated by him so that is the reason why he did not raise any complaints. From the demeanour of the accused in court I am of the view that the accused is a person who cannot be forced to something he does not wish to. In this case, it is obvious to me that the accused was aware of the fact that if he signs he will be admitting the allegations yet he


signed the caution interview. I do not accept that he was forced to admit anything or forced to sign.

52. Based on the above, this court prefers the evidence of all the prosecution witnesses over that of the accused. The accused gave his answers in the caution interview and the charge statement voluntarily on his freewill without any threat, intimidation, assault, inducement, oppression or breach of the constitutional rights enshrined in the Constitution of Fiji or in breach of any common law rights.
53. The caution interview and the charge statement were also conducted in circumstances which were fair to the accused. I therefore rule that the caution interview and the charge statement of the accused dated 26th February, 2019 is admissible in evidence and the prosecution may tender the same at trial.

ORDERS

1. The caution interview and the charge statement of the accused dated 26th February, 2019 is admissible and the prosecution may tender the same at trial.




Sunil Sharma
Judge

At Lautoka

25 September, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.