

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 265 of 2018

STATE

vs.

AKUILA NASI

Counsel: Ms. U. Tamanikaiyaroi for the State
Mr. K. Verebalavu for for Accused

Voir Dire Hearing: 22nd to 24th September 2020

Ruling: 28th September 2020

RULING

[Voir Dire]

1. The Prosecution proposed to adduce the record of the caution interview of the accused in evidence, for which the accused objected on the following grounds:
 - (i) *That Akuila Nasi's caution interview was not conducted fairly because of the following reasons:*
 - (a) *That Akuila Nasi was assaulted by three CID officers during the interview.*

(b) *Akuila Nasi was assaulted on his shoulder, his chest and his ribs with wooden pieces of a chair.*

(c) *Upon Akuila Nasi's request to be taken to the Hospital or a Health Centre, the Police had denied his request.*

(ii) *For the trial within a trial, Akuila Nasi requires the Station Diary from Valelevu Police Station for the period he was held in custody.*

2. Consequently, a trial within a trial (voir dire) was commenced on the 22nd of September 2020 and concluded on the 24th of September 2020. The learned counsel for the Defence made an application to amend the grounds of voir dire during the course of the hearing, which was granted with the consent of the Prosecution. The amended grounds are that:

(i) *That Akuila Nasi was assaulted by police officers at the Valelevu Police Station leading up to his Caution Interview and also during his Caution interview.*

(ii) *That Akuila Nasi was assaulted on his shoulder, his chest and his ribs with wooden pieces of a chair during the Caution interview which led him to admit to the allegations put to him by the Interviewing officer involuntarily.*

(iii) *That Akuila Nasi was also assaulted during the process of Scene Reconstruction within his Cautioned interview.*

(iv) *That Akuila Nasi's request to be taken to the hospital on the 24th of June 2018 was not entertained by the officers at Valelevu Police Station.*

3. The Prosecution presented the evidence of four witnesses, and the Defence adduced the evidence of the accused. Subsequently, the learned counsel for the Prosecution and the Defence filed their respective written submissions. Having carefully taken into consideration the grounds challenging the admissibility of the caution interview in evidence, the evidence adduced by the parties, and the written submissions, I now proceed to pronounce the ruling as follows.

4. The accused alleges that he was taken into the police custody on the 24th of June 2018 and kept in the Valelevu Police Station's cell. He was then taken out of the cell and taken to the Crime Office, where three CID officers had assaulted him on his ribs, chest, and forehead with a broken chair. He was then taken back to the cell. In a while, he was taken back to the Crime Office, and the recording of the caution interview commenced. When he denied the allegation during the recording of the interview, the three police officers again assaulted him with the broken chair, forcing him to admit the allegation. Due to these assaults, the accused had to admit the allegation.
5. On the contrary, the Prosecution denies any assaults either before or during the recording of the caution interview. The Interviewing Officer and the Witnessing Officer of the caution interview explained in their respective evidence that the accused was given all the rights necessary to conduct the caution interview voluntarily and fairly. The accused had appeared calm, normal, and friendly in answering the questions posed to him during the recording. The accused had not made any complaint about any assaults. Neither had made any request that he needs to visit the hospital or a doctor.

The Law

6. 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." *Á 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).

7. The Fiji Court of Appeal in **Fraser v State ([2012] FJCA 91; AAU24.2010** (the 30th of 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."

8. The test enunciated in **Shiu Charan (supra)** and **Fraser (supra)** constitutes two components. The first is the test of oppression. The court is required to satisfy the caution interview was recorded without any form of force, threats, intimidation, or inducement by an offer of any advantage. The second component is that, even though the court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation, or inducement, it is still required to satisfy that no general grounds of unfairness existed before or during the recording of the caution interview.
9. The Prosecution has the onus to prove beyond a reasonable doubt that the accused's caution interview was recorded voluntarily and fairly.

Analysis

10. As stated above, the accused's challenge against the admissibility of the caution interview is based upon three grounds. The first is that he was taken out of the cell and assaulted by three police officers before the caution interview was commenced. Neither the Interviewing Officer nor the Witnessing Officer was aware that the accused was taken out of the cell

before the commencement of the caution interview. The Interviewing Officer had taken the accused from the cell and escorted him to the Crime Office to commence the caution interview. The caution interview had commenced at 1420 hours (2.20 p.m.). The Interviewing Officer and the Witnessing Officer admitted that the Station Diary keeps the records of the event that took place at the police station accurately.

11. According to the entry No 158 of the Station Diary dated the 24th of June 2018, PC Tasleen had released the accused from the cell at 1339 hours for an interview. PC Tasleen said that he was assigned to lock and release the accused on the 24th of June 2018. Only the Officer in Charge of the Station and the Interviewing Officers have the authority to instruct him to release an accused from the cell. However, PC Tasleen cannot recall whether he released the accused at 1339 hours for the interview.
12. Furthermore, the entry No 172 of the Station Diary dated the 24th of June 2018 states that the accused was relocked in the cell at 1415 hours by PC Tasleen. Interestingly, PC Tasleen again could not recall whether he relocked the accused, as stated in the entry No 172 of the Station Diary. In addition to that, neither the Interviewing Officer nor the Witnessing Officer knew about the accused's movement before the commencement of the caution interview. Accordingly, the Prosecution failed to explain the reason for releasing the accused from the cell at 1349 hours and then relocked him in the cell at 1415 hours. Moreover, the Prosecution failed to explain the accused's whereabouts during the time between 1349 hours and 1415 hours. On the other hand, the accused claims that he was taken to the Crime Office and assaulted by three CID officers during that time. In consequence of these reasons, there is a reasonable doubt whether the accused was taken to the Crime Office from the cell and assaulted by the three CID officers.
13. Coupled with the above reasonable doubt, the Prosecution failed to explain the reason for the contradiction of the commencement time of the caution interview and the time the accused was released from the cell by the Interviewing Officer. According to the Interviewing Officer and the Witnessing Officer's evidence, the record of the caution interview had commenced at 1420 hours. However, the entry No 166 of the Station Diary

dated the 24th of June 2018 states that the Interviewing Officer had released the accused for the interview at 1435 hours. There are 15 minutes of unaccounted and unexplained time gap between the Interviewing Officer's evidence and the Station Diary.

14. In view of the reasons discussed above, there is a reasonable doubt whether the accused was taken to the Crime Office from the cell and assaulted, as he claimed before the caution interview was commenced. Moreover, such doubt leads to a further doubt whether such assault had affected the voluntariness of the answers given by the accused in the caution interview, thus making the admissibility of it in evidence unsafe.
15. In conclusion, I find that the accused had not given his answers in the caution interview voluntarily. Accordingly, I hold that the caution interview of the accused is not admissible in evidence.




R.D.R.T. Rajasinghe
Judge

At Suva
28th September

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.