

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

**Criminal Case. No. HAC 63 of 2019**

**BETWEEN** : **THE STATE**

**A N D** : **AMITESH PRASAD**

**Counsel** : Mr. S. Seruvatu for the State.  
Mr. R. Charan for the Accused.

**Dates of Hearing** : 09 and 10 August, 2022

**Date of Submissions** : 09 September, 2022

**Date of Ruling** : 13 September, 2022

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**VOIR DIRE RULING**

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[1] The accused is charged with one count of rape contrary to section 207 (1) and (2) (a) and (3) and one count of indecent assault contrary to section 212 (1) of the Crimes Act.

[2] The prosecution wishes to adduce in evidence at trial the caution interview of the accused dated 21<sup>st</sup> March, 2019 and charge statement dated 23<sup>rd</sup> March, 2019. The accused objects to the admissibility of the caution interview upon the following amended grounds of voir dire filed herein:

1. *That his admission and/or confession were obtained by force through physical abuse before and during the caution interview.*
2. *That at the time of his arrest, he was not explained in the Hindustani language, the language that he understands, on the allegation, reason for arrest and detention and thus breaching his Constitutional Rights and protected under the provisions of Section 13 (1) (a) of the Constitution of the Republic of Fiji.*
3. *That his caution interview was not conducted in the Hindustani language, the language that he understands despite the interviewing officer being aware of him having not much knowledge of English and neither was a translator made available to translate for him or have his caution interview conducted in Hindustani.*
4. *That he was intentionally misled by the Caution Interviewing Officer that he have a right to answer the question asked as stipulated in section 13 (1) (a) (1) of the Constitution and his answer may assist police to look at his case from his point of view and make proper decision and thus breaching his Constitutional Rights created and protected under the provisions of Section 13 (1) (a) (ii) of the Constitution of the Republic of Fiji.*
5. *That he was forced and coerced by the Interviewing Officer to agree to what had already being written down in his caution interview and that he was assaulted and threatened whilst in Police custody.*
6. *That confessions are involuntary since it had been obtained through verbal and physical assault, pressure, duress and force by police officer at the Sabeto Police Station prior to and during the duration of his interview.*

7. *That he was not given a chance to have his caution interview that was typed on the computer read back to him nor was it translated and explained to him instead was only told to sign.*
8. *That his Charge Statement was not conducted in the Hindustani language, the language that he understands.*
9. *That he was not given a chance to have his Charge Statement that was typed on the computer read back to him nor was it translated and explained to him instead was only told to sign.*
10. *That there was a breach of his right under the Judges Rules and Article 10(1) and 14(3) (g) of the International Covenant and Civil and Political Right prior to and during his interview by the Police.*
11. *That at the time of his arrest, he was never accorded his Constitutional Rights created and protected under the provisions of Section 13 (1) (a) (i) (ii) (iii) of the Constitution of the Republic of Fiji.*

[3] The burden is on the prosecution to prove beyond reasonable doubt that the caution interview and the charge statement of the accused were 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**

[4] 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.”*

- [5] The Constitution of the Republic of Fiji at sections 13 and 14 have recognised and endorsed the above mentioned principles as well.
- [6] 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 investigations and that the accused had voluntarily given his answers on his own freewill.
- [7] Secondly, if there has been oppression or unfairness then this court can in its discretion exclude the interview. 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.

- [8] After the voir dire hearing both counsel were given the opportunity to file and serve their written submissions. The defence filed theirs but the state counsel did not. At the time of issuing directions for submissions time line this court had made it known to both counsel that the court will still proceed to deliver its ruling in the absence of the submissions.

### **EVIDENCE**

#### **PROSECUTION CASE**

- [9] The prosecution called three witnesses the first witness Cpl. 3666 Mosile Tebau informed the court that on 21<sup>st</sup> March, 2019 at 4.20pm he had arrested the accused at the Nadi Bus Stand. The witness was accompanied by Cpl. Saibhan, Cpl. Iliesa and Woman Constable Mere. The police vehicle was parked beside the bus driven by the accused, the witness approached the accused and asked him if he understood English language when the accused said yes, the witness arrested the accused. At this time the witness explained to the accused his right to remain silent and the consequences of not remaining silent and his right to consult a lawyer and his family members.
- [10] The accused said he wished to consult his Manager after which the accused drove the bus to the bus company garage. The witness also got in the bus with the accused. According to the witness there was no assault, threat or intimidation on the accused at the time of arrest and on the way to the bus garage.
- [11] At the bus garage the witness informed the Bus Company Manager about the accused arrest, after this the accused got into the police vehicle and all went to the Sabeto Police Station where the accused was handed to the charge room personnel.

- [12] The witness also charged the accused on 23<sup>rd</sup> March, 2019 at 6.30pm at Sabeto Police Station in the English language by the use of a computer.
- [13] According to the witness, it was the accused who wanted to be charged in the English language.
- [14] The accused was given his Constitutional rights but he refused to exercise the same. The accused was not threatened or assaulted or intimidated before or during or after the charge. The accused made a confession. According to the witness the accused is a polite person and had answered the questions well.
- [15] The witness maintained that the accused was explained in the English language which was the accused preferred language. The accused was reading the charge as per question and answer 15. The charge statement of the accused dated 23<sup>rd</sup> March, 2019 was marked and tendered as prosecution exhibit no.1.
- [16] In cross examination, the witness stated that the use of the word wish to consult a lawyer and the right to consult a lawyer meant the same thing to him. The witness does not speak Hindi but he had taken the Hindi words from the interview statement and typed it in the charge.
- [17] The reason why the witness proceeded with the charge in English language was because the accused understood English and that is why he proceeded with the charge. There was no assault on the accused by any other police officer or by the witness during the charge and also he did not swear at the accused. During the charge the witness did not see any physical injury on the accused and the accused had not complained of any ear and body pain.

- [18] In re-examination the witness stated that he was reading what he was typing and the accused was also reading at the same time.
- [19] The second witness DC 4472 Jone Vakasa informed the court that he was the interviewing officer in this case. He interviewed the accused in the interview room of the Sabeto Police Station on 21<sup>st</sup> March, 2019 for three days. The witnessing officer was Cpl. Ilesia Ratulevu. The interview was conducted in the English language by the use of a computer. After the interview was complete it was printed and signed by all of them.
- [20] The caution interview of the accused dated 21<sup>st</sup> March, 2019 was marked and tendered as prosecution exhibit no. 2. According to the witness the accused wished to be interviewed in English language, however, he is also fluent in Hindi, so he was explaining everything to the accused in Hindi. The witness had given all the rights to the accused including his right to remain silent.
- [21] There was no force or pressure on the accused, he was not assaulted, threatened, intimidated or any promise made to him either by the witness or the witnessing officer. The reason for the interview to be held in the afternoon was because in the morning inquiries were to be conducted in the case. The accused was reminded of the allegation and the caution at the commencement of each day's interview, the accused was also given all his rights as well. The accused understood all his rights and said he will exercise the same later. The accused also understood the caution put to him.
- [22] After the interview had ended, the witness explained the entire document to the accused in Hindi, the accused then signed on all the pages of the interview. Although the witnessing officer was present throughout the three days of the interview, this officer forgot to sign the caution interview since he was the Crime Officer at the time who was

busy in administration work of the police station. The accused was cooperative and humble throughout the interview.

- [23] When it was suggested that since the accused was not knowledgeable in English language and no Hindi translator was available the witness explained he was reading in English and explaining in Hindi. The accused had given all the answers in his caution interview voluntarily and there was no assault or force on the accused, before the interview ended he had asked the accused at question and answer 83:

*Is this the true record of your interview which you gave to police?*

*Ans. Yes.*

- [24] The accused was also given a chance to read his caution interview but he did not wish to. The witness denied all the allegations raised by the accused in his amended voir dire grounds.

- [25] In cross examination, the witness agreed that the witnessing officer Cp. Iliesa Ratulevu was present during the three days of the interview but did not sign the original caution interview because the witnessing officer was the Crime Officer who had to attend to admin and operation duties. The witnessing officer was moving in and out during the caution interview and he did not sit throughout.

- [26] At question 5 of the caution interview the witness had asked the accused *“are you conversant with the English language and understand it very well?”* The accused had answered, *“Not much only little bit understand English languqge”*. The witness agreed that he knew the accused did not have full knowledge of English.

- [27] The witness stated the accused was not frightened during the caution interview and he was cooperative. The witness also stated that on every recommencement of the interview, the allegation, caution and rights



were put to the accused. The witness further mentioned that he typed in the English language but explained it to the accused in Hindi.

[28] The explanation by the witness in Hindi was understood by the accused. There was no assault on the accused either by the witnessing officer or the witness, the reason for the delayed interview was because the complainant was saying she was raped in Savalau and the accused said it was in the bus garage so they had to carry out further inquiries to find out the truth.

[29] Upon further questioning the witness stated that when he asked a question it was explained in Hindi and after the entire caution interview was printed he again explained it to the accused. Once the accused was okay with it he pointed out to the places where the accused had to sign which the accused did.

[30] The final witness Iliesa Ratulevu informed the court that in 2019 he was a police officer based at the Sabeto Police Station. In this case, he was the witnessing officer, the interview was conducted by the use of a computer. After the caution interview was printed it was explained again to the accused and then the accused was asked to sign.

[31] Before the interview there was no assault or threat or promise made to the accused. Furthermore, the accused did not complain about anything the witness stated that he was present when the interview was conducted but since he was the Crime Officer he had other matters to attend to so he was going out for 1 or 2 minutes and then came back. As a result he overlooked to sign the original caution interview. When the interview was printed the witness was somewhere in the police station the accused was not assaulted by anyone during the interview.

[32] The witness also stated that he appointed Constable Vakasa to be the interviewing officer because this officer could speak Hindi fluently.

Constable Vakasa also preaches in Hindi on T.V. for a church group. The witness maintained that the interviewing officer at no time had assaulted the accused. The allegation and the caution was put to the accused and also explained in Hindi by the interviewing officer which the accused understood. According to the witness the accused was treated in a humane manner with respect.

[33] In cross examination, the witness stated when the accused was escorted to Sabeto Police Station from the bus garage he was sitting in the front passenger seat of the police vehicle. The witness denied that he had assaulted the accused during arrest at Nadi Town and he also denied punching the face and both ears of the accused which had started to bleed before the commencement of the interview. The witness further explained had he punched the accused there would have been an official complaint against him.

[34] The witness agreed that the accused was arrested on Thursday and produced in court on Monday. When it was put to the witness that prior to the caution interview and during the caution interview the rights and the caution were not explained to the accused in Hindi language, the witness stated that the questions were read in English and then explained in Hindi by the interviewing officer.

[35] When it was put to the witness that he was sitting beside the accused in the police van from Sabeto to Savalau and he had punched the accused on his stomach the witness denied and said he was sitting in the front seat and he did not punch the accused. After the caution interview finished on the third day the interview was read and explained to the accused by the interviewing officer.

[36] This was the prosecution case.

## DEFENCE CASE

- [37] At the close of the prosecution case the accused exercised his right to give evidence and be subjected to cross examination.
- [38] The accused informed the court that he is a bus driver by profession on the day he was arrested by the police he had driven the bus from Votualevu to Nadi bus stand. After all the passengers left, a police officer came and informed him that a complaint had been received against him from one girl and then he was arrested. After consulting the Manager of the bus company the accused drove the bus with the police officer Mosile to the bus garage.
- [39] At the garage he boarded the police vehicle and was taken to Sabeto Police Station. In the vehicle he was sitting between two police officers at the back seat one of them was Iliesa Ratulevu who on the way to Sabeto Police Station got hold of the accused neck from behind and pushed him to the front middle portion of the front seats. At this time the accused got scared this same officer told the accused to say during the caution interview that he had moved the panty of the complainant by using his finger and then penetrated his finger into the vagina. The accused responded by saying that he did not do that.
- [40] Moreover, this same officer during the caution interview had punched the accused on both his ears. The accused was sitting on a chair and this officer was telling him *"you have done this"*. The accused explained when he was punched on the left side his head was spinning and when he got straight the same officer again punched him on the right side of his head.
- [41] The accused said his head was spinning and he was dizzy. The officer threatened the accused not to tell anyone otherwise he will be assaulted even more. He is educated up to form 3 and he is not good at reading

and speaking English that well. He had informed the interviewing officer that he does not understand English that well and he had asked to be explained in Hindi.

[42] The witness also stated that during his caution interview the officer was asking in English and he was replying in Hindi but he did not understand the questions asked. When questioned if the questions were not understood how come he was answering in Hindi? The accused said *“I understand English a bit only the questions which I got to know I answered”*.

[43] The accused wanted to be interviewed in Hindi so the officer said that he will speak in Hindi. The accused stated that when he was not answering the officer asked why you are not answering. He was also not told about the consequences of not remaining silent. At the time of arrest the accused was informed of the reasons for his arrest, he was spoken to in English which he understood.

[44] The accused stated that he only understood the explanation in Hindi during his caution interview. After the interview ended he had asked for it to be read but it wasn't read to him.

[45] In respect of the charge statement the accused said the officer did not know Hindi so the officer spoke in English. When the accused said he did not understand English well the officer swore at the accused saying *“sonalevu”* speak in English. The officer did not read the charge statement to the accused. The accused maintained that he had not made any admission in the charge statement. The accused signed after it was printed by the officer. He was produced in court on Monday 25<sup>th</sup> March, 2019.

[46] In cross examination, the accused agreed that he was arrested on 21<sup>st</sup> March, 2019 on a Thursday at the Nadi bus stand. He was told of the

reason for the arrest which he understood but he was not told of his right to remain silent. The accused said on the way from the garage to Sabeto Police Station a police officer got hold of his neck and pushed it in between the front seats and he was told to agree to what he will be asked. He was not punched by police officer Iliesa Ratulevu in the police vehicle.

[47] When further questioned the accused said in the police vehicle police officer Mosile Tebau had told the accused to tell the truth. When suggested that he told the truth when caution interviewed the accused said "*only one or two places there are wrong answers.*" The accused cannot read and write Hindi so if he was interviewed in Hindi and everything was written in Hindi he would not have read it.

[48] Although he understood a little bit of English it was not okay that he was interviewed in English. The questions were translated in Hindi by Jone which he understood. The allegation was also read in English and explained in Hindi which the accused had understood. According to the accused he was not cautioned on all the days of the interview he was told of the allegation but not about his right to see his family members, or consult a lawyer. When it was suggested that Iliesa Ratulevu had never assaulted him, the accused said it was during the interview he was assaulted.

[49] In respect of visitation by his family members the accused said on the day he was arrested he was visited by his father and maternal grandfather. On Friday that is next day his mum and dad came with his grandmother during the day and at about 1.40 pm. When he spoke to his family members he did not tell them that he was assaulted during the caution interview because he was told by officer Iliesa Ratulevu if he told anyone about the assaults he will be further assaulted.

[50] The accused denied the suggestion that he lied to court when he said he was bleeding from both his ears, he did not request anyone to see a doctor. The accused also did not tell the Nadi Magistrate's Court about the assaults but he only told the High Court. The accused agreed that he was treated with utmost dignity but he did not give his answers voluntarily because he was assaulted in his caution interview and he did not apologise in his charge. He was assaulted on the second day of his caution interview then he gave his answers. Finally the accused stated that when he was arrested and handcuffed officer Iliesa shook his jaw.

[51] This is the defence case.

### **DETERMINATION**

[52] The prosecution wishes to rely on the confessions obtained by the police during investigation. The accused on the other hand is objecting to the admissibility of the caution interview and the charge statement as per the amended grounds of voir dire filed. The accused further stated that he did not confess voluntarily and on his freewill but it was as a result of threat, intimidation and assault by police officer Iliesa Ratulevu after his arrest.

[53] There is no dispute that the accused was arrested at Nadi bus stand on 21<sup>st</sup> March, 2019 at about 4.20 pm. The caution interview commenced the same day at 7.05 pm which was conducted over three days till Saturday 23<sup>rd</sup> ending at 4.20 pm. Thereafter the charge was commenced at 6.30 pm since it was a weekend the accused was produced in the Magistrate's Court on Monday 25<sup>th</sup>.

[54] Although the accused has not raised in his voir dire grounds the issue of expiry of 48 hours in police custody, I have in the interest of justice focused my attention to this Constitutional safeguard available to the

accused. Section 13 (1) (f) of the Constitution of Fiji provides that an arrested person is to be brought before a court no later than 48 hours after the time of arrest.

[55] There is no doubt that the accused was brought before the court on the fifth day after his arrest. The interview had lasted for three days from Thursday to Saturday, the charge was conducted on Saturday as well. Since it was a Saturday the only possible appearance in court was Monday which was done.

[56] The defence states that the caution interview and the charge were conducted by Itaukei police officers in the English language which the accused did not understand and therefore he made those admissions. The accused was also not given all his rights as required by the Constitution.

[57] After carefully considering the evidence adduced by the prosecution and the defence this court prefers the evidence of all the police officers as credible and reliable. I do not accept that the accused was assaulted by former police officer Iliesa Ratulevu on the way to the Sabeto Police Station after his arrest, or before and during the caution interview. I also do not accept that the accused was intimidated by Iliesa in the police vehicle to agree to what the accused will be asked during the caution interview.

[58] The accused in cross examination agreed that it was the arresting officer Mosile who had told the accused to tell the truth. I have no doubt in my mind that the accused gave the answers in the caution interview voluntarily. The allegations raised by the accused are an afterthought.

[59] The interviewing officer was asked in cross examination to speak in Hindi which he did fluently. I have no doubt that this officer knows Hindi language well and was able to explain the questions to the

accused after reading in English. I also accept that the accused understood the explanation of the interviewing officer.

[60] I do not accept the accused was assaulted, threatened, intimidated or falsely promised anything from the time of arrest to the bus garage and from there to the Sabeto Police Station or before, during and after the caution interview. A perusal of the caution interview shows that the accused has given inculpatory as well as exculpatory answers.

[61] In my judgment if there were any threats, intimidation or assault as mentioned by the accused then he would not have made any exculpatory statements throughout the caution interview. I accept the evidence of the interviewing and the witnessing officers that the accused had given his answers voluntarily.

[62] I have perused the caution interview and would like to mention that the accused had answered questions and answers 3 to 5 which are mentioned below:

*Q. 3 For the purpose of this interview can you tell me your educational or academic qualification?*

*Ans: Vocational for mechanic at Sabeto College.*

*Q. 4 What was the language of instruction when you pursuing your qualification?*

*Ans: English language.*

*Q.5 Are you very conversant with the English language and understand it very well?*

*Ans: Not much only little bit understand English language.*

[63] The above questions and answers suggest that the accused had the necessary education to understand English even though the accused



said in his interview that he understood little bit of English. The answers mentioned in the interview attributed to the accused shows that the accused knew what he was asked and it was only him who could answer those questions.

- [64] It is noted that in the caution interview the accused was adamant that he did not go to Savalau but to the bus garage and that the complainant wanted to be with him and so on. This aspect of the caution interview gives credence to the evidence of the interviewing officer that after reading the questions in the English language he explained the same to the accused in Hindi which the accused was able to understand and answer.
- [65] In respect of the charge statement I accept the accused had made an admission on his freewill and he did so after understanding the questions asked. The lack of questioning in Hindi did not affect the accused since his little bit of knowledge in English was enough to enable him to understand the questions asked and answer accordingly.
- [66] I also accept that the accused was given all his Constitutional Rights as well as his right to remain silent and the consequences of not remaining silent during his caution interview and charge.
- [67] The accused was produced in the Magistrate's Court on Monday after the 24 hours had expired on Saturday. The reason given by former police officer Ratulevu was that it being a weekend they had no choice but to produce the accused on Monday since it was not practicable to produce the accused on Saturday.
- [68] Section 13 (1) (f) of the Constitution of Fiji provides that an arrested person is to be brought before a court not later than 48 hours after the time of arrest.

[69] Section 13 (1) (f) of the Constitution of Fiji states:

*“Every person who is arrested or detained has the right*

*(f) to be brought before a court as soon as reasonably possible, but in any case not later than 48 hours after the time of arrest, or if that is not reasonably possible, as soon as possible thereafter;*

[70] Furthermore upon simple mathematics the 48 hours after the time of arrest of the accused had ended at 4.20pm on Saturday 23<sup>rd</sup> March, 2019.

[71] When the accused was produced in the Magistrate’s Court he was represented by counsel and no complaints were raised against the police officers. On the other hand the accused counsel informed the Magistrate’s Court that the accused had cooperated with the police during investigation (last page of the copy record). If the accused was assaulted by police as mentioned by the accused then no doubt he would have instructed his counsel accordingly. The accused has made a serious allegation of bleeding ears yet he did not instruct his counsel to seek a court order to be seen by a doctor is unbelievable.

[72] Since the 48 hours from the time the accused was arrested had expired on Saturday at 4.20 pm the accused charge statement that was taken at 6.30 pm on Saturday 23<sup>rd</sup> March, 2019 was in excess 48 hours and therefore cannot be relied upon by the prosecution.

[73] This court also accepts that the accused was promptly informed of the reasons of his arrest and he understood the same in compliance with section 13(1) (a) of the Constitution of Fiji.

## **CONCLUSION**

- [74] Taking into consideration all the evidence adduced and the submission of counsel this court is satisfied beyond reasonable doubt that the accused had voluntarily given his answers in the caution interview of the 21<sup>st</sup> March, 2019 without any threat, intimidation, assaults, inducement, oppression or breach of his Constitutional Rights enshrined in the Constitution of Fiji or in breach of any common law rights. The caution interview was also conducted in circumstances which was fair to the accused. I prefer the evidence of all the prosecution witnesses in this respect.
- [75] In respect of the charge statement this court rules it to be inadmissible since it was obtained in breach of the accused Constitutional Right not to be kept in custody for more than 48 hours after the time of arrest without being produced in court. Although I prefer the evidence of the charging officer Cpl. Mosile Tebau, however, the Constitutional provision prevails as the Supreme Law. The accused was charged after 48 hours of arrest hence any admission obtained was unlawful.
- [76] In view of the above, I rule that the caution interview of the accused dated 21<sup>st</sup> March, 2019 is admissible in evidence and the prosecution may tender the same during trial. However, for the above reasons the charge statement of the accused dated 21<sup>st</sup> March, 2019 is inadmissible and therefore cannot be tendered at trial by the prosecution.

## **ORDERS**

- (a) The caution interview of the accused dated 21<sup>st</sup> March, 2019 is admissible and the prosecution may tender the same at trial. However, the charge statement dated 21<sup>st</sup> March, 2019 was obtained in breach of the accused's Constitutional Right by being

kept in excess of 48 hours in custody hence this document is inadmissible in law.



**Sunil Sharma**  
**Judge**

**At Lautoka**

13<sup>th</sup> September, 2022

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs Ravneet Charan Lawyers, Lautoka for the Accused.**