

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL CASE NO: HAC 124 OF 2012

STATE

-v-

MOHAMMED ALFAAZ

Counsel : **Mr Timoci Qalinauci for State**
Mr R Kumar for Accused

Date of Hearing : **26 – 27 November 2013**
Date of Ruling : **29 November 2013**

VOIR DIRE RULING

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 20.9.2012 and the charge statement on 21.9.2012. The accused objects to the admissibility of these documents on the grounds that this statement was obtained after assaults, threats and oppression.
2. The test of admissibility of all confessional statements made to the Police officers, 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 confessions. Finally, where the rights of the suspect under Section 27 of the previous 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.

3. The preamble of the Judges Rules states as follows:

“That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.”

4. The Privy Council, In the case of *Wong Kam-ming v The Queen (1980) A.C. 247, P.C.*, observed that:

*“[t]he basic control over the admissibility of statements are found in the evidential rule that an admission must be voluntary i.e. not obtained through violence, fear or prejudice, oppression, threats and promises or other improper inducements. See decision of Lord Sumner in *Ibrahim v R (1914-15) AER 874 at 877. It is to the evidence that the court must turn for an answer to the voluntariness of the confessions.”**

5. The Fiji Court of Appeal in case of the *Ganga Ram and Shiu Charan v R (FCA Crim.App. 46/1983)* outlined the two-part test for the exclusion of confessions at page 8:

“It will be remembered that there are two matters each of which requires consideration in this area.

*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 use of force, threats or prejudice or inducement by offer of some advantage-what has been picturesquely described as ‘flatter of hope or the tyranny of fear.’ **Ibrahim v R (1914) A.C. 559; DPP v Pin Lin (1976)A.C. 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 Sanag (1980) A.C. 402, 436CE*. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account.”*

6. It is for me to decide whether interviews were conducted freely and not as a result of threats, assaults or inducements made to the accused by a person or persons in authority. Secondly, if I find that there has been oppression or unfairness, then I can in my discretion exclude the interviews. Finally, if his rights under the Constitution or common law have been breached, then that will lead to exclusion of the confessions obtained thereby, unless the prosecution can show that the suspect was not thereby

prejudiced. These rights include such rights as having a legal representative of his choice and having access to family, next-of-kin or religious counselor.

7. The burden of proving voluntariness, fairness, lack of oppression, compliance with common law rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the prosecution. They must prove these matters beyond reasonable doubt. In this ruling, I have reminded myself of that.
8. Now I look at the evidence presented in respect of the caution interview.
9. The accused was caution interviewed by DC Arvind Singh. He is an officer with 18 years experience. He had received instructions from station officer to conduct the caution interview of the accused. It was commenced at 1830 hours. No witnessing officer was present. However, there were other officers in the bure where the interview was conducted. PC Saiban and SC Mani were present there. This bure had three doors.
10. The interview was conducted in Hindi language in question and answer format. Before and during the interview he did not assault, threaten or force the accused to admit. No other officer did so. The accused did not make any complaint. He was given the right to consult family member, lawyer or legal counsel. He told that he had already spoken to his lawyer Mr. Eroni. The accused was given time to rest during the interview.
11. A reconstruction was done during the interview. PC Saiban, Sgt. Maika and himself had gone with the accused. He did not assault or threaten the accused during reconstruction. He did not see any other officer doing so. No promise or inducement was made to accused during the interview. He did not receive such information.
12. At the conclusion the content was read back and opportunity was given to add, alter or delete. The interview was signed by the accused and he counter signed it. He identified and tendered the original of the caution interview marked PVD 1. He also tendered an English translation prepared by him marked PVD 2. He identified the accused in Court.
13. Under cross examination he admitted that he is also known by the nick name Chaina. He denied banging the head of the accused on a table before the interview. According to him, PC Saiban had brought the accused to the bure. He denied that the accused informed him that he was assaulted by Saiban. He said that when asked the accused wanted to conduct the interview in Hindi. He denied threatening and swearing at the accused to sign the interview. He denied hitting the accused.
14. The next witness for the prosecution was PC Abdul Saiban. He is an officer with 13 years experience. He was on duty at the bure in the police station on the date of question. He corroborated the evidence of DC Arvind Singh.

15. Under cross examination he said that he came to duty on 20.9.2012, the accused was already brought in to the station. He was kept at the charge room. After morning parade and brief he had spoken to the accused for 2 minutes. Orderly Mani was also present there. Sgt. Maika had brought the lunch for the accused. He denied that Sgt. Maika ate the lunch of the accused. He had escorted the accused for caution interview. He denied punching the accused or wrapping the accused's head with a plastic bag. The accused was handed over to Satendra Kumar after the interview for charging.
16. The next witness was DC Satendra Kumar. He is an officer with 24 years experience. He had received instructions to charge the accused. It was done at the bure in the police station. It commenced at 10.55 a.m. and concluded at 11.30 a.m. in Hindi language.
17. The accused did not make a complaint of assault or threat. He did not assault or threaten the accused. He did not see any injury marks on the accused. The accused was given opportunity to consult family member, lawyer or legal counsel. No promise was made to the accused. At the conclusion, content was read back to the accused and he was given an opportunity to add, alter or delete. The accused made a statement during the charging. It was signed by the accused. He counter signed. He identified and tendered the original charge statement marked PVD 3. He had made a translation. It was identified and tendered marked PVD 4. He identified the accused in Court.
18. Under cross examination he said that he was not present during the caution interview. He denied assaulting the accused. He denied not taking any statement.
19. With that evidence prosecution closed their case in the voir dire inquiry. As there was a case to answer by the accused in the trial within trial, defence was called and his rights were explained.
20. The accused gave evidence. His position was that he was arrested on 20.9.2012 while on his way to work by four police officers. He was taken to Sabeto police station. He was assaulted several times on the side of his ribs by PC Saiban at the station. He was not given his lunch.
21. The charging officer Chaina took him to the bure around 7.00 p.m. and started assaulting him. He was slapped. Then Chaina had started writing his statement. After writing the statement his head was banged on the table. Then he was asked to sign the statement. He never gave a statement to Satendra Kumar.
22. One Fijian officer had wrapped his head with a plastic bag. Satendra Kumar was standing on his feet. He had made a complaint about assault to the traffic officer who arrested him. He had not made a complaint to the Magistrate.

23. Under cross examination, he admitted that he had a counsel at the Magistrate Court. But he never had a chance to tell him about the assault. He had told his mom who retained the lawyer about the assault. He said he was assaulted even when he was asked his name, age and the place of work and he gave correct answers. He had no visible injuries due to police assault. He had not made a complaint to prison officers even though he was in pain. When the two sets of papers of the caution interview and charge statement was shown he admitted signing those. He said both were written by one officer.
24. I have carefully considered the available evidence in respect of the caution interview on 20.9. 2012 and the charge statement on 21.9.2012 of the accused.
25. Accordingly, I have come to the view that in regard to any allegation of assault by the police, the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the accused that he was assaulted before and during the caution interview and the charge statement. I am satisfied that the caution interview and the charge statement were voluntary, that those were obtained in fair circumstances, that it was in no way oppressed or beaten out of the accused in contravention of his rights either under the Judges' Rules or of the Constitution which was not in operation.
26. The caution interview of the accused on 20.9.2012, and the charge statement of the accused on 21.9.2012 being voluntary made and not created out of oppression are therefore admissible in evidence.

Sudharshana De Silva
JUDGE

At Lautoka
29th November 2013

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