

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

**CRIMINAL CASE NO.: HAC 168 OF 2012**

STATE

-v-

LUKE NACULA

**Counsels** : Mr. F. Lacanivalu for the State  
Accused in person

**Date of hearing** : 10 March 2014 to 12 March 2014

**Date of Ruling** : 13 March 2014

## **Voir Dire Ruling**

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 27.11.2012. The accused objects to the admissibility of this document on the grounds that this statement was obtained involuntarily through assaults, physical pressure, intimidation and threats by the police.
2. The test of admissibility of all confessional statement 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 confession. 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 over bearing 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 interview was 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 interview. Finally, if his rights under the Constitution or common law have been breached, then that will lead to exclusion of the confession 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 non-compliance, 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 and charge statement.
9. The first witness was DC Jone Aravoro. On instructions received from the station officer he had gone in search of the accused with SC 2943 Nadibi on 26.9.2012. At the Nasivikoso village they have gone to meet the parents of the accused. Then they were led to the accused's house. Accused was drinking grog. Accused was told about the allegation and they had to wait in the village that night. The next day in the morning accused was escorted to Navosa police station. He was handed over to the station orderly. Although the accused was explained this evidence and his right to cross examination he said that he agrees with this evidence.
10. The next witness for the prosecution was DC Karim Begg. He is an officer with 10 years experience. He was the station orderly on 27.11.2012. The accused was handed over to him in the morning. He was searched and locked in the cell. There was no complaint from the accused. He had served lunch to the accused. The accused was explained this evidence and his right for cross examination. He only asked whether the witness was present during the interview. This was answered in negative.
11. The third witness was DC Lemeki Kurisoqo. He had served the breakfast and lunch to the accused on 28.11.2012. He had recorded the same in the station diary. Accused had not made any complaint to him. This witness too was not cross examined by the accused.
12. The next witness for the prosecution was DC Alosio Manakiwai. He is an officer with 9 years experience. On 27.11. 2012 he had received instructions to caution interview the accused. It was conducted at the crime office at the Navosa police station. It was commenced at 1300 hours and concluded at 1415 hours. It was conducted in iTaukei language in question and answer format. Accused was given his rights. The accused was not assaulted, threatened or forced to admit. No complaint was made by the accused. He had not seen any injury on the accused. There was no inducement, threat or promise during the interview. At the conclusion, content was read back to the accused. Opportunity was given to add, alter or delete. The accused signed the statement. He counter signed. He identified the original caution interview statement marked PE 5 and tendered the same. He also tendered the translation marked PE 6. He identified the accused in Court.

13. Under cross examination it was put to this witness that he banged the head of the accused three times. Witness denied that.
14. After the close of the prosecution case, I found a case to answer from the accused in the trial within a trial and explained the accused his rights.
15. The accused gave evidence. He stated that he was arrested at home and taken to the Navosa police station the following day. He was put in the cell. He was not given breakfast or lunch. His statement was recorded in the afternoon. The officer recording the statement banged top of his head thrice with fist. He was pushed to cell after the statement.
16. Under cross examination he admitted that he was given his lunch. His position was that he ate it in the afternoon. He admitted that he did not make a complaint to the Magistrate or to anyone thereafter.
17. I have carefully considered the available evidence in respect of the caution interview on 27.11.2012 of the accused.
18. 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 during the recording of this caution interview. I am satisfied that the interview was voluntary, that that was obtained in fair circumstances, that that 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.
19. The caution interview of the accused on 27.11.2012, being voluntary made and not created out of oppression is therefore admissible in evidence.

Sudharshana De Silva  
**JUDGE**

**At Lautoka**  
**13<sup>th</sup> March 2014**

**Solicitors: Office of the Director of Public Prosecutions for prosecution**  
**Accused in Person**