

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 348 of 2011

BETWEEN: **THE STATE**

A N D: **MATAIASI VESUKULA**

Counsel: Mr. Prasad Y. with Ms. Vavadakua A. for the State
 Accused In Person

Date of Ruling: 28th January 2014

RULING ON VOIRE DIRE

1. Mataiasi Vesukula, the accused is being charge with 1 count of Rape contrary to section 207 (1) (2) (c) and (3) of the Crimes Decree No. 42 of 2009. The prosecution alleges that the accused on the 18th day of October 2011 in Nakorolevu in the Central Division penetrated the mouth of the complainant with his penis.
2. On 19th of March 2012 when this matter was mentioned before Fernando J, the accused had alleged that he was assaulted to his head by one pregnant lady police officer with her shoes and which resulted him in admitting the commission of crime. The disclosures pertaining to the *voire dire* enquiry had been given to the accused on 3rd of October 2012.
3. The existing law pertaining to the admissibility of confessions is well settled in this jurisdiction. It is the duty of the prosecution to prove beyond reasonable doubt that the alleged admissions and/or confessions were made

by the accused voluntarily to a person in authority without any improper practices such as the use of force, assaults, threats, oppression or inducements by offer of some advantage. If the prosecution proves beyond reasonable doubt that such confession and/or admission were made voluntarily, it is still left to prove that no unfairness existed in the way the person/persons in authority acted when such an admission and/or confession were made. (**Shiu Charan v. R.** (FCA. Crim. App. 46/1983).

4. In this instance, the Prosecution called 3 police officers, the Interviewing Officer, Witnessing Officer and the Investigating Officer to prove their case. Corporal 1855 Arvin Singh said that he was the Interviewing Officer of the accused and he neither assaulted, threatened or coerced nor made any promises to the accused before, during or after the cautioned interview. Inspector Savou, the Witnessing Officer confirmed Corporal Arvin Singh's testimony. Further WD3749 Atishni Ashika Ram, the Investigating Officer, stressed that she never assaulted the accused nor participated in recording the cautioned interview.
5. After having explained that the accused has the right to cross examine the above witnesses by translating their testimonies to I-Taukei language through the court interpreter, the accused merely put the suggestion to the Interviewing Officer and the Investigating Officer that he was assaulted by them. On top of that the accused opted to remain silent when the defence was called at the end of the case of the prosecution in the *voire dire* enquiry.
6. It is only the verbal allegation of the accused stands against the Investigating Officer. There is no evidence before this court to say that the accused sustained any injury over the alleged assault or received medical treatments for such an assault or he reported the alleged assault to anybody in authority, especially the learned Magistrate when produced before the Magistrate's Court.
7. In this background this court has no hesitation in concluding that the prosecution has proved beyond reasonable doubt that the police officers did not assault, threaten, induce or oppress the accused whilst he was in their custody. Therefore the voluntariness of the cautioned interview of the

accused remains intact. Furthermore, nothing came into light to show court that the police officers had caused any unfairness to the accused when he made the statement in issue.

8. Thus, this court orders the statement made by the accused during the cautioned interview may led in evidence, if the prosecution is willing to do so. It is a matter for the assessors to accept or reject the content of the said statement at the trial proper.

Janaka Bandara
Judge

At Suva
Officer of the Director of Prosecution for State
Accused In Person