

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 003/2012

BETWEEN: THE STATE

AND:

1. PAULIASI TEMO
2. APISAI NABURELEVU
3. ORISI NABUKA
4. TEVITA RAKAI
5. METUI CORIAKULA

COUNSEL:

Ms K Semisi for the State
Ms L Raisuva for the 1st and 2nd Accused
Mr Tavake for the 3rd and 5th Accused
Mr A Naco and J Vosokata for the 4th Accused

Date of Hearing: 02-05/06/2014

Date of Ruling: 06/06/2014

[Name of the victim is suppressed. She will be referred to as I.G.]

VOIRE DIRE RULING

[01] The Director of Public Prosecution had filed the following charges against the above named accused persons.

First Count

Statement of Offence

RAPE: contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009.

Particulars of Offence

PAULIASI TEMO, on the 14th day of December 2011 at Kelland Street, Narere in the Central Division, had Carnal knowledge of I.G, without her consent.

Second Count

Statement of Offence

RAPE: contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009.

Particulars of Offence

APISAI NABURELEVU, on the 14th day of December 2011 at Kelland Street, Narere in the Central Division, had Carnal knowledge of I.G, without her consent.

Third Count

Statement of Offence

RAPE: contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009.

Particulars of Offence

ORISI NABUKA, on the 14th day of December 2011 at Kelland Street, Narere in the Central Division, had Carnal knowledge of I.G, without her consent.

Fourth Count

Statement of Offence

RAPE: contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009.

Particulars of Offence

TEVITA RAKAI, on the 14th day of December 2011 at Kelland Street, Narere in the Central Division, had Carnal knowledge of I.G, without her consent.

Fifth Count

Statement of Offence

RAPE: contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009.

Particulars of Offence

METUI CORIAKULA, on the 14th day of December 2011 at Kelland Street, Narere in the Central Division, had Carnal knowledge of I.G, without her consent.

[02] The State intends to rely on the Records of Interview of the First, Second and Third accused persons.

[03] The First accused objects to the admissibility of a caution interview made on 18-20/12/2011 at Nasinu Police Station, on the basis that it was not voluntarily made but induced by threats and promise. The oral grounds on which he initially challenged the admissibility are:

1. That he was induced to confess of his caution interview.
2. That there was a breach of his rights under the Judges Rules and Article 9(2),10(1) and 14(3)g of the International Covenant on Civil and Political Rights during his interview by the police.

[04] The Third and Fourth accused persons object to the admissibility of a caution interview made on 20/12/2011 at Nasinu Police Station, on the basis that it was

not voluntarily made but induced by threats and promise. The oral grounds on which they initially challenged the admissibility are:

1. That the statements were obtained in circumstances that were unfair to the accused persons.
2. That they were intentionally misled by the police as to the nature of the allegation and that they were to be witnesses to the complaint of assault by the complainant.
3. That they were forced and coerced by the interviewing officer to agree to what had already being written down in their caution interview.
4. That they were threatened whilst in police custody and were not allowed to talk to their mothers when they are in the police custody nor when their mothers came around to see them at the police station.

[05] The test for the admissibility of statements made by an accused to person in authority is whether they were voluntary, obtained without oppression or unfairness or in breach of any Constitutional Rights. The burden proving voluntariness, fairness, lack of oppression and observance rests on the prosecution and all matters must be proved beyond reasonable doubt.

[06] Evidence of threats of violence, if accepted by the court, is sufficient to raise a reasonable doubt as to voluntariness. If what the accused persons say is true, it would create an oppressive climate of fear.

The Law

[07] The principles governing the admissibility of an admission or a confession are well settled. A confession or an admission made by an accused to a person in authority could not be properly given in evidence unless it was shown that it was made voluntarily, that is not obtained through violence, fear or prejudice, oppression, threats and promises or other inducements (**Ibrahim v R {1914} AC 59**). Even if such voluntariness is established, the trial court has discretion to exclude a confession or an admission on the ground of unfairness (**R v Sang [1980] AC 402**). A further ground that an admission or a confession could be excluded is for breaches of constitutional rights.

- [08] Oppression is anything that undermines or weakens the exercise of free will (**R v Prestly [1965] 51 Cr. App. R**). The onus of proving voluntariness, fairness and lack of oppression is on the prosecution and they must prove these matters beyond a reasonable doubt. If there has been a breach of any of the accused's constitutional rights, the prosecution must prove beyond a reasonable doubt that the accused was not thereby prejudiced.

The Prosecution Case

- [09] At the Voire Dire inquiry Prosecution called four (04) witnesses.
- [10] DC 2914 Tautu of Nasinu Police Station gave evidence first. He was the investigating and interviewing officer of First accused in this case. He had interviewed the First accused between 18-20/12/ 2011. He had recorded the caution interview statement of the First accused at Nasinu Police Station. The First accused and Cop. Surend were present at the Crime Branch. Interview was recorded in English Language. During the interview the First accused was appeared to be normal and he answered all the question put to him. Recording started on 18/12/2011 at 21.00hours and concluded on 20/12/2011. Necessary rests were given. He identified the signatures of his, First accused and witnessing officer on the caution interview statement. Before, during or after recording the caution interview statement he was not subjected to intimidation, assault or threat my any police officer of Nasinu Police Station. The caution interview statement of the First accused was marked as P-01. He identified the First accused in open court.
- [11] In the cross examination by Counsel for the First accused, witness said that he gave all the rights before recording the interview. The First accused voluntarily came to the police before his arrest. His caution interview was recorded from 18-20/12/2011. He denied that his statement was recorded before recording of the caution interview statement. According to the witness the station diary is maintained by the station orderly. Witness said that all the accused persons were taken to hospital before they were taken to court.
- [12] DC/3699 Eric Whippy was on duty at Nasinu Police Station on 20/12/2011. As per the instructions he had recorded the caution interview statement of the Third accused. All the rights were given before recording his caution

interview statement. No witnessing officer was present. The interview was recorded in English language. Before, during or after recording the caution interview statement he was not subjected to intimidation, assault or threat by any police officer of Nasinu Police Station. The caution interview statement of the Third accused was marked as P-01. He identified the Third accused in open court.

[13] In the cross examination witness admitted that this is serious a case. Due to scarcity of police officers at that time he could not engage a witnessing officer. He further said that the Third accused was fluent in English language. Witness denied that he assaulted the accused during the interview.

[14] DC/3175 Roy was called next. He was the officer who recorded the caution interview of the Fourth accused. The interview was recorded in English language. Sgt/Falemaka was present as a witnessing officer. The caution interview was recorded on 20/12/2011. Before, during or after recording the caution interview statement he was not subjected to intimidation, assault or threat by any police officer of Nasinu Police Station. The caution interview statement of the Fourth accused was marked as P-01. He identified the Fourth accused in open court.

[15] In the cross examination witness said that his rights were properly explained before commencement of the interview. He said that the charge was properly explained to the accused and entering particulars in the station diary is not his duty. Witness denied that the statement was recorded before recording of the caution interview statement.

[16] DC/3701 Epele produced the Station Diary pertains to 18-21/12/2011.

[17] After closing the prosecution case defence was called and First, Third and Fourth accused gave evidence from the witness box.

[18] According to the First accused he was called to Nasinu Police Station on 18/12/2011 to sign as a surety for his wife Bola. His wife was arrested for assaulting the victim in this case. When he went to the police he was arrested by PC/Tautu and assaulted. He was questioned of raping the victim in this

case. PC Tautu told him that he would help him. Hence he admitted the charge.

- [19] In the cross examination witness said that his rights were not given. Right to Legal Aid Counsel was not given. He reiterated that he admitted the charge as PC/Tautu told him to do so in order to get things easier.
- [20] In the re-examination the First accused said that he doesn't know the meaning of caution interview statement.
- [21] According to the Third accused when he went to Nasinu Police on 20/12/2011 DC/Whippy questioned him in English language which was not clear to him. At that time another police officer was seated in the room. His interview was not read back to him before he placed his signature. He said yes to everything due to fear.
- [22] In the cross examination witness said that he is not fluent in English language. The charge was not clear to him when it was explained in English.
- [23] According to the Fourth accused he was 20 years old when he was arrested. On 20/12/2011 when he was going to FNPF a police officer namely Roy called him and requested to come to Nasinu Police Station. The reason was to be a witness in a case. At the police station he was questioned by police officer Roy in a closed room. He was questioned in Fijian language but was recorded in English. He did not understand the charge as it was not explained to him. When his rights were explained to him he has said "No".
- [24] In the cross examination witness said that he can't understand English language. He said that he was interviewed to make him a witness in this case.
- [25] The First accused was called to the police station to sign a bail bond of his wife. At that time he was arrested in connection with this case. He was arrested on 18/12/2011 and his interview had been recorded continuously till 20/12/2011. During or after recording his interview he was not produced before a doctor.
- [26] The Third accused took up the position that he was not fluent in English Language. Therefore he did not know what had been written in his caution interview statement.

- [27] According to Fourth accused he was not informed about his charge. He was only called to be a witness in this case. Question No.04 of his caution interview statement clearly reflect that he was not properly informed about the charge before recording his caution interview statement. Further he is not fluent in English language.
- [28] In this case the police officers who recorded the caution interview statement have not followed the necessary procedures when they interviewed the accused persons. It clearly shows that the accused persons are induced by threat and promises. Further the witnessing officers were not present during the voire dire inquiry despite adjournment sought by the state counsel. All caution interviews are recorded in English language where the accused persons are not fluent in English language. The charge was not informed to Fourth accused when his interview was recorded.
- [29] Accordingly, I conclude that the police had not followed proper procedure to record the caution interviews of accused persons. Further the Fourth accused had not been informed of his charge. This creates a serious doubt as to the genuinity of recording the caution interview statements.
- [30] I, therefore, rule out the admissibility of the alleged caution interview statements of accused persons marked as P-01, P-02 and P-03 on the ground of their involuntariness and unfairness. Their admission in evidence will affect the fairness of the proceedings. Accordingly, I reject the caution interview statements of First, Second and Fourth accused persons as being irrelevant.



P Kumararatnam

JUDGE

At Suva
06/06/2014