

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 150 OF 2013

STATE

-v-

3. NACANI TIMO

Counsels : Ms S Kiran for the State
3rd Accused in Person

Date of Hearing : 04-05th June & 09th June 2014

Date of Ruling : 10 June 2014

VOIR DIRE RULING

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 23.7.2013 and charge statement dated 24.7.2013. The accused objects to the admissibility of this document on the grounds that this statement was obtained involuntarily through pressure, intimidation and threats by the police.
2. The test of admissibility of all confessional statement made to the Police officer, 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 suspects 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

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 thetyranny 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 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 and charge statement.
9. The first witness was DC Solo Nasilasila. He is an officer with 10 years experience. He had gone in search of the accused with team of officers on 22.7.2013. The accused was arrested in Nadonumai around 1300 hours. The accused was informed the reason for his arrest and his rights. He did not use any force on the accused. The accused had bruises on his forehead. He received information that those were received previous night at a night club. He was taken to the night club to check his alibi. Then he was taken to Nabua police station. Then transport was arranged to take him to Lautoka.
10. Under cross examination he denied assaulting the accused at the time of arrest and at the Nabua police station. He admitted that he had forgotten to state in his statement that he gave the rights to the accused at the time of arrest.
11. The next witness for the prosecution was DCpl. Vereivalu. He is an officer with 8 years experience. He had assisted DC Solo in arresting the accused. The accused was cautioned before the arrest. No force was used for arrest. The accused had injuries from a scuffle at a night club. The accused was firstly taken to the night club and then to Nabua police station. He and Cpl. Ilisoni had escorted the accused to Lautoka police station. They left Nabua around 1600 hours and reached Lautoka around 2000 hours. The accused did not make any complaint. He was not assaulted at any time. He was handed over to Lautoka police. He identified the accused in Court.
12. Under cross examination it was suggested to him that he had not mentioned about the accused in his police statement. The answer is that he could not recall.
13. The third witness for the prosecution was DC Arvind. He is in police force for 25 years. He had interviewed the accused about case of robbery. Then DC Baseisei had come to interview in respect of another robbery case. He was in the crime office till 6.00 p.m. He had not seen anyone assaulting the accused.
14. Under cross examination he said he is not the witnessing officer and he had not signed the caution interview.
15. The next witness was DC Baseisei. He is an officer with ten years experience. On 23.7.2013 he had received instructions to caution interview the accused. Before the interview he had seen bruise marks on the face of the accused. The accused had stated that he is having short breath. When asked the accused had stated that he is fit for the interview.

16. The interview was at crime office. It was in English language. It was commenced at 3.00 p.m. and concluded that day around 6.00 p.m. for the accused to have rest and dinner. Then the interview recommenced next day at 7.00 a.m. and was concluded at 9.35 a.m.
17. The accused was given breaks and time to rest. He was provided with meals. The interview was in question and answer format. The accused was not oppressed or forced. He was not assaulted. At the conclusion the content was read back to him. He was allowed to make changes or alterations. Record was signed by the accused. He counter signed. He identified and tendered the original marked VD 1. The answers to questions were given on his own free will. The accused did not make any complaint of assault after the interview.
18. Under cross examination he denied that he assaulted the accused during the interview. He said that he don't know how the injuries in the medical report happened. He denied forcing the accused to admit. He denied not giving any rest till the accused admitted the offence.
19. The next witness for the prosecution was Doctor Kepera Tabuaniqili. She identified the report on the accused. The accused was examined on 25.7.2013. He had given a history of alleged police assault couple of days before. The accused had a bruise on his fore head and cheek. The nasal bone was fractured. He was given pain relief and antibiotics. The injuries were more than a day old. The injuries were consistent with the history. He would have got those due to punch or assault. The injuries may be two or three days old.
20. In cross examination she said the injuries could have been caused by hand and not by an object.
21. The last witness for the prosecution was DC Apenisa. He is police force for 8 years. On 24.7.2013 he had received instructions to charge the accused. He had cautioned the accused at the crime office. The charge was in English language in question and answer format. The accused was not oppressed or forced. He was not assaulted. No promise or inducement was made to him.
22. The accused made a statement in the charge. It was signed by the accused. He counter signed the same. He identified and tendered the original marked VD 2. He identified the accused in Court.
23. Under cross examination he said that he could not recall whether accused had any injuries at the time of the charge. He denied that the charge statement was fabricated and he forced the accused to sign the same. In re-examination he said that he observed the accused to be fit for the charge.
24. 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.

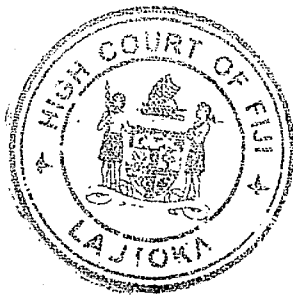
25. The accused gave evidence. He was arrested on 22.7.2013 in the afternoon. He was at home with his wife, her elder brother and his wife. Strike back team from Nabua police station came looking for him. When he came out of the house they started beating him up. He was not informed the reasons for arrest. He was beaten in front of his wife.
26. Then he was taken to Nabua police station. He was beaten with batons and hose pipes there. There was a cut on his face and he felt pain in his back and chest. They stopped beating when they saw that he had a black eye.
27. Same afternoon he was taken to Lautoka police station. He was assaulted there by an Inspector in the crime office. When he was taken to record statement on 23rd he was forced and threatened. When the statement was taken he requested to go to the toilet and have water, but that was refused. He was told that he will not be given breaks until he admits the crime. When he was taken back to cell same day around 6.00 p.m. cell mates had enquired about the injuries. He did not speak much as he had injuries.
28. Next day the interview was completed first and then he was charged. When he was charged he was beaten again. He was produced in court and taken to remand. He was not allowed in the prison as there were injuries on him. Then he was taken to Magistrate the following day. He had requested for a medical examination. When he was taken to the doctor all his injuries were recorded by the doctor.
29. Under cross examination he said that about five officers assaulted him at the time of the arrest with hose pipes and batons. He denied that he and his wife were taken to Nabua police station at different times in separate vehicles. He denied being taken to O'reilly's night club. At Nabua police station he was assaulted by several officers using batons and hose pipes. They caused the cut on his head, punched him on the face and assaulted him on chest and back for few minutes. Black eye was caused by few minutes beating at Nabua police station. He had this till the day he was remanded.
30. At Lautoka police station he was punched on his nose with fist once by the Inspector. At the time he came to Lautoka police station he had the injury on the forehead and black eyes on both eyes. He also had pain throughout his body. He had black eyes and pain in the body at the time he went for medical examination. He had told about this to the doctor. He denied going to a night club before the day of the arrest. He denied that the injuries are from a fight at the night club.
31. The force used during the caution interview is that he doesn't admit he will be assaulted again. He said that he was assaulted during the interview as well. When he went back to cell after the interview he had shown cut on the forehead, broken nose, black eyes chest and back to the cell mates. The charging officer had used his fist to poke his injured forehead.

32. He admitted that he did not make a complaint to the Magistrate when he was firstly produced before him.
33. The third accused called two witnesses to give evidence on his behalf. Both were cell mates at the Lautoka police station on 23.7.2013. The first witness was Alexio Moli. He stated that when he came to cell around 7.00 p.m. Timo had cuts on his forehead and nose. His cheek was swollen. He had told him that police assaulted him forcing him to admit the allegation against him. He had complained of body pains and looked scared.
34. Under cross examination, he said that Timo was lying down when he arrived. The cut on the forehead was U shape deep cut. It was a fresh injury. The cut on the top of the nose was about ½ inch or 1 inch. It was dry. No blood coming out from injuries. Timo had told him that he was assaulted since the date of arrest. Timo had black eyes. He had same black eyes following morning and on the 25th when he was brought to Natabua remand center.
35. The next witness was Inosi Laqekoro. When he saw the accused on 23.7.2013 after 6.00 p.m. there was cuts on his forehead, top of his nose and swelling on the cheek. The accused had told him that he was assaulted by police. The injuries were fresh and blood was coming out from forehead and nose.
36. Under cross examination he stated that the cut on the forehead was deep and in shape of a sloping line. The accused was trying to wipe off blood using his hand. There was redness on the forehead. There was big swelling on the nose and blood coming out. There was big swelling on the cheek. The accused was not talking properly. He said that he came to the cell with Alexio Moli. The accused had red eyes. That was there the following morning and when he saw the accused next at Natabua prison.
37. I have carefully considered the available evidence in respect of the caution interview on 23.7.2013 and the charge statement on 24.7.2013 of the accused.
38. Accordingly, I have come to the view that in regard to any allegation of assault, pressure, intimidation and threats by the police, the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the accused and his witnesses that he was assaulted and forced before, during this caution interview and charge statement.
39. Police officers have recorded the injuries on the accused when he was firstly taken to Lautoka police station. According to the cell book entry, there was a cut on his forehead even at that time. The doctor had not seen black eyes on both eyes as claimed by the accused. Further accused had not complained to the doctor about chest or back pain. Only injuries the accused had were bruises on the forehead, cheek and fracture of the nasal bone. The two witnesses called by the accused gave two different versions regarding freshness of the injuries. One witness said that there was blood coming out from the nose and forehead. Other said there was no blood. There was no mention about black/red eyes or pain in the chest or back in the medical report. There is no mention about nature of

injuries sustained by the accused in his voir-dire grounds filed. The medical report in this was prepared only last week. I cannot believe the accused or his witnesses on the injuries on the accused.

40. I am satisfied that the interviews were voluntary, that those were obtained in fair circumstances, that those were 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.

41. The caution interview of the accused on 23.7.2013 and the charge statement of 24.7.2013, being voluntary made and not created out of oppression is therefore admissible in evidence.




Sudharshana De Silva
JUDGE

At Lautoka
10th June 2014

Solicitors: Office of the Director of Public Prosecutions for prosecution
3rd Accused in Person