

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 48 OF 2012

STATE

-v-

EREMASI TASOVA

Counsels : Mr. Babitu for the State
Accused in person

Date of hearing : 28 April 2014 to 05 May 2014

Date of Ruling : 06 May 2014

Voir Dire Ruling

1. The State seeks to adduce into evidence the record of a caution interview of the 2nd accused on 15.3.2012. The accused objects to the admissibility of this document on the grounds that this statement was obtained involuntarily through pressure, intimidation and threats and assault by the police. Accused had submitted that he has a Medical report to prove that he was assaulted by the police before and during the caution interview.
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 suspects under Section 27 of the 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 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 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 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 Inoke Colati. He is an officer with 10 years experience. On 15.3.2012 he had received instructions to caution interview the suspect. DC Tuitai was the witnessing officer. The suspect had complained of body pains before the interview. His nose was bleeding. He was covering his nose with a handkerchief. He was asked whether he wants to see a doctor. He wanted to see the doctor after the interview. He had conducted the interview in English language. Accused was not assaulted or threatened by him or the witnessing officer during the interview. The suspect gave answers voluntarily. A reconstruction was done during the interview. The suspect was not assaulted or threatened at that time. The interview went on for two days. He identified the original interview notes. The suspect was produced to a doctor during the interview. The suspect did not make a complaint thereafter. He identified the suspect in court.
10. Under cross examination he said that he had no knowledge that the suspect was assaulted before the interview by some police officers to admit the offence. He further stated that the suspect did not look that hurt to take him to medical attention. He said that taking to a doctor before the interview will depend on the seriousness of the injury and that morning suspect looked well. Although suspect was bleeding from nose it was not constant bleeding and he was only covering his nose with a handkerchief. He could not recall any other injury on the suspect. He denied the allegation that he and the witnessing officer assaulted the suspect before and during the interview.
11. The next witness for the prosecution was DC Senitiki. He is a police officer with 12 years experience. On 14.3.2012 he had gone to Suva on instructions to look for a suspect on information. Around 13.30 hours he had seen the suspect travelling in a bus. When the suspect saw them he had jumped from the moving bus and ran away towards mangrove swamp. They could not locate him.
12. On the evening same day around 8.00 p.m. they have received information from the girl friend of the suspect that he is at Nadera. They were going in a taxi. The taxi was stopped

at Magbul place at a shop. The suspect had resisted the arrest. The officers had used reasonable force to overpower him. The suspect was brought straight to Lautoka police station. There was a black eye and cut on the lips of the suspect. Blood was coming from his nose. In cell book entry 359/19 these injuries are noted. It was tendered marked VD 1.

13. Under cross examination he denied that police used two vehicles. He stated that the suspect overpowered him when he tried to arrest him. He denied forcing the suspect to show the place where the vehicle was abandoned.
14. The third witness for the prosecution was Sgt. A. Tuitai. He is an officer with 29 years experience. On 15.3.2012 he had received instructions to be the witnessing officer of the caution interview of the suspect. It was at the crime office. It was conducted in English language. He or the interviewing officer did not assault or threaten the suspect before or during the interview. The suspect had a black eye. There was a slight injury on the nose. A reconstruction was done. No police officer assaulted or threatened the suspect during the reconstruction. The suspect did not make any complaint at the conclusion of the interview. He identified the interview notes and the accused.
15. Under cross examination he said that suspect looked fit and normal before the interview and there was no bleeding from the nose. The suspect was taken to a doctor on the second day of the interview.
16. Although the prosecution wanted to call the doctor who examined the accused they could not do so before the closing of their case as the son of the doctor was not well. The accused also wanted the doctor to be called or the medical report to be admitted.
17. After the close of the prosecution case, I found a case to answer from the accused in the trial within a trial.
18. The accused gave evidence. His position was that he went to Suva on 10.3.2012 and stayed in a relations house till 14.3.2012. On 14.3.2012 his de facto wife came there and wanted him to come down to her place. They have taken a taxi. On the way they have gone to Magbul shopping center to buy some groceries. When they stopped the taxi, two twin cabs came and parked on either side of the taxi. Police officer in civvies got out from the twin cabs and started throwing punches at him while he was inside the taxi. One of them pulled him out and dumped him on the ground. Then all officers started assaulting him. Then he was handcuffed and put into one vehicle. He was firstly taken to Nabua police station. He was further assaulted there and then taken to Lautoka police station.
19. On the way he was taken to Drasa, Lololo. There he was further assaulted and punched on the face. He was beaten on the ankle with a piece of wooden rod. He was forced to admit

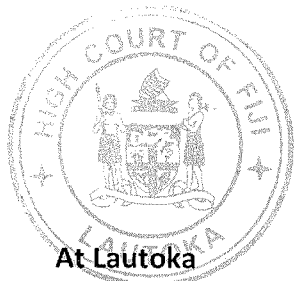
that he was one of the persons who abandoned the stolen vehicle. When he was taken to Lautoka he had injuries. He was locked in the cell. He was assaulted in the absence of the interviewing officer before the interview. The interviewing officer ignored all the injuries and commenced the interview. He was further assaulted before and during the interview by the investigating officer and witnessing officer. He was punched on the mouth. Where he cannot resist any further and was in great pain he had admitted the offence. He was forced to sign the interview.

20. Under cross examination he stated that he was at Malakai's house from 10th to 14th. He denied that he was in a bus with his wife on 14th and jumping out of the bus. He said that at the time of arrest he was punched on the region of his eyes. He was given several punches. After he was put on the ground he was assaulted on the forehead and kicked on the stomach. He denied that he received injuries while resisting arrest.
21. At Nabua police station he was assaulted on stomach, eye region and on forehead. There was a cut beneath his eye and bleeding. He got that at the place of arrest. At Drasa, Lololo he was assaulted on the ankle with wooden rod and on the eye region. There was lot of blood on his face. He was assaulted on the stomach at a passage in the Lautoka police station. At the time of interview he was assaulted on the mouth and lips. He had injuries on the face and ankle. He admitted that he never made a complaint about police assault.
22. The accused called two witnesses on his behalf. Malakai Kotobalavu was the first witness. He stated that the accused came to his house in Nadera on 10.3.2012 with his wife and stayed there and his wife went to her house. On 14th his wife came to pick him up to go to her house after 8.00 p.m. Accused was in normal condition at that time.
23. Under cross examination he said that he knew the accused for years and the first time the accused came to his house he fell in love with his niece. During his stay the accused just stayed at his house and watched movies. One day he went to the plantation. Accused had come to stay in his house as he had a fight with his wife.
24. The next witness for the accused was Sunia Raraqio. On 14.3.2012 around 8.00 to 9.00 p.m. he had gone to Magbul shopping center to buy a recharge. When he came out of the shop he had seen a taxi had come and stopped in front of the shop. Then two twin cabs have come and stopped beside the taxi. All of those inside the twin cabs jumped out and punching a man inside the taxi. After that he was pulled out and hand cuffed him. He was further assaulted and put in to a twin cab. The person arrested was the accused. The accused did not try to escape or punch them back.

25. Under cross examination he stated that he know the accused through wife of the accused. He said that two persons assaulted the accused while he was inside the taxi and pulled him out. The accused was assaulted by several officers thereafter. Some slapped and other punched him. He did not see them kicking the accused. The accused was punched on the face and the chest. The accused was trying to protect his face.
26. Doctor Jone Tabuya was called by the prosecution. He is a medical officer since 2004. He had examined about 50 cases of alleged police assault. He identified and tendered the medical examination form marked VD 2. The accused had stated to him that he was punched several times on the head by police men. His mental status was calm and he looked healthy. He had ecchymosis below both eyes. This was caused by blunt trauma. It takes about 6 hours to form the black eye and it will remain for about 2 weeks. His both eyes were swollen. He could not say that it occurred same day.
27. There were also lacerations on both cheek bones. It was not a serious injury. If the person had this and someone punched him again the injury will look different. It was not a fresh injury. There were also lacerations on inner surface of upper and lower lips. These were also caused by blunt force trauma within 48 hours. Those were also not fresh. Further there was undisplaced fracture in the nose. There was crack in the nasal bone. This too was caused by blunt force. Crack like this will take about 3 weeks to heal. If it is fresh, bruising, tenderness and bleeding could be observed. The bleeding would stop in about an hour and if the person touches the nose or blow the nose bleeding could occur again.
28. Under cross examination by the accused he stated that he could only assess the physical injuries and that he could not assess the psychiatric trauma.
29. I have carefully considered the available evidence in respect of the caution interview on 15.3.2012 of the accused.
30. Accordingly, I have come to the view that in regard to injuries in the Medical report of the accused, the state had satisfied me beyond reasonable doubt that those were caused at the time of arrest. The injuries were noted by the police officers in the relevant books. The interviewing officers have observed these injuries and had continued with the interview. The accused was asked whether he was suffering from any pain or injuries that will affect him giving the interview. The accused had told that they could continue with the interview and he need to see a doctor after the interview. The accused was produced before a doctor during the interview. The doctor observed him to be mentally calm and physically healthy. I reject the evidence of the accused that he was forced before, during and after this caution


interview. I am satisfied that the interview was voluntary, that it was 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.

31. The caution interview of the accused on 15.3.2012, being voluntary made and not created out of oppression is therefore admissible in evidence.



At Lautoka

06th May 2014


Sudharshana De Silva
JUDGE

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