

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 66 OF 2012

STATE

-v-

RAVNEEL SHARMA

Counsel: **Mr. S. Babitu for the State**
Mr. R. Kumar for the Accused

Date of Hearing: **15th June, 2015**
Date of Ruling: **17th June, 2015**

VOIR DIRE RULING

- (1) The State seeks to adduce into evidence the cautioned interview statement purportedly made by the Accused to Lautoka Police Station on 06.05.2012.
- (2) The Accused, appearing in person without a counsel (at that time), tendered a letter to Court indicating that the interview statement was obtained under duress. In his letter, the accused stated that;
 - a. The lady officer who conducted the interview threatened him and banged the telephone receiver on his head.
 - b. Male police officer who later joined the interviewing officer threatened him.
- (3) It is for me to decide therefore whether the interview was conducted freely and not as a result of threats, assaults or inducements made to the suspect by a person or persons in authority (in this case the Police). Secondly, if I find that there has been oppression or unfairness, then I can in my discretion exclude the statements in the interview and the

charge sheet. Finally, if any accused's rights guaranteed under the Constitution 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 the right:

- (i) to have a legal representative of his choice; and
- (ii) to have access to family or next of kin.

- (4) The Fiji Court of Appeal in *Ganga Ram and Shiu Charan v R* 1983 (unreported) outlined the two-part test for the exclusion of confessions at p.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 (sic) beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – which has been picturesquely described as" the flattery of hope or the tyranny of fear" Ibrahim v R (1914) A.C. 599; DPP v Ping 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 police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. (R 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."

- (5) In relation to voluntariness, breaches of the Judges Rules are relevant but do not determine what is voluntary. The real question under principle (e) under the preamble to the Judges Rules is whether the statement is 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". Oppression is something which "tends to sap and has sapped that freewill which must exist before the confession is voluntary".

- (6) The burden of proving voluntariness, fairness, lack of oppression and of Constitutional rights in effect at the relevant times where applicable, and lack of prejudice (if there is) to the suspect, rests at all times with the prosecution. The Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.

I summarize evidence led in the inquiry in coming to my conclusion.

The Prosecution Case

- (7) The State called three Police witnesses including the interviewing officer.
- (8) Interviewing officer WPC Shareen Reshmi Lata of Lautoka Police Station first gave evidence. The witness said that she conducted the interview in English with regard to an alleged rape and abduction of an underage girl at the charge room of the Lautoka Police Station on 06.05.2012. The accused Ravneel Sharma answered the questions voluntarily at the interview without any complaint. WPC Mereisi and PC George witnessed the interview. The accused was not assaulted or threatened before or during the interview. She tendered in evidence the cautioned interview statement signed by the accused and countersigned by her marked PE.1.
- (9) In cross examination, witness Shareen denied threatening or banging the telephone receiver on accused's head or shoulder. She also denied that an officer by the name of Wimal threatened the accused during the interview. She admitted, however, that the two officers, George and Mereisi, did not in fact witness the interview and were involved in charge room duties although they were present in the charge room. She denied that the admissions in the statement were written by her when the accused kept on denying the allegations. She said that the accused made partial admissions and did not admit the rape allegation. When repeatedly questioned, referring to the recorded admission to the effect that the accused had inserted a finger into the vagina of the victim, she admitted it was an admission of rape.
- (10) PC George said that he was involved in charge room duties when Shareen interviewed the accused. He was not supposed to witness the interview and was free to go out at any time and in fact went out to relieve himself. He said that he did not see WPC Shareen or Officer Wimal assaulting or threatening the accused.

Case for the defence

- (11) Accused gave evidence and said that he did not admit the allegations voluntarily. He was threatened by a police officer by the name of Wimal before the interview, he said. Officer Wimal held his neck and banged his head against the wall and threatened to tell the truth. Interviewing Officer Shareen also threatened and banged the telephone receiver on his forehead when he refused to admit the allegation. Question nos. 1-85 he answered voluntarily, he said. When he denied that he unclothed Maneesha, Shareen threatened and banged the telephone receiver on his head. When he was asked whether he inserted his finger into

Maneesha's vagina he said he denied. There again he was threatened and hit with the telephone receiver. In cross examination, he said that he was scared to complain against police officers when produced before the Magistrate.

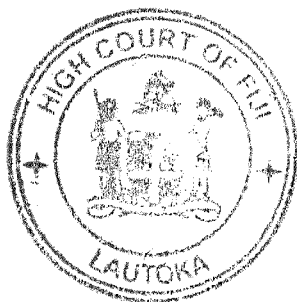
Analysis

- (12) The evidence of the Interviewing Officer Shareen was inconsistent and unreliable. She said, in cross examination, that the accused made partial admissions and denied the allegation of rape. In a moment thereafter she said, the accused had admitted having inserted his finger into victim's vagina and that was rape. In evidence in chief, she said that there were two officers, PC George and WPC Mereisi, present witnessing the interview. In cross examination, she said that the two officers were not involved in the interview and they did their charge room duties. PC George admitted that he was not required to witness the interview and went out at one time to relieve himself. Prosecution failed to call the other Witnessing Officer, WPC Mereisi, to prove that she was there to witness the interview.
- (13) Careful perusal of the cautioned interview statement, PE.1 shows that the Accused's position had suddenly changed and there was a considerable departure from his earlier position when he admitted the allegation of rape in latter part of the statement. A reasonable inference can be drawn that this sudden departure is a result of either threat or intimidation of the Interviewing Officer as alleged by the Accused.
- (14) In my mind, the Accused has sufficiently explained his failure to complain to the Magistrate the police harassment he faced when he said that he was scared to complain in front of police officers. Accused was 21 years, and when exposed to such an unfamiliar, hostile environment, his position is quite understandable. He tendered a letter to this court, incorporating his grievance, when he felt safe.
- (15) There is a reasonable doubt as to the voluntariness of the accused's interview statement. There is no proof that the interview was witnessed by any other Police Officer, a fatal irregularity on the part of the Police.
- (16) I accept the evidence of the defence and reject the prosecution evidence.

Conclusion

- (17) That the Prosecution has failed to discharge the burden beyond reasonable doubt. Therefore, I find that the cautioned interview statement of the accused to have been made involuntarily. I hold that

the cautioned interview statement cannot be lead in evidence at trial and inadmissible.




Aruna Aluthge
JUDGE

At Lautoka
17th June 2015

Solicitors: **Office of the Director of Public Prosecution for the State**
 Office of the Legal Aid Commission for the Accused