

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 99 OF 2014**

**STATE**

**-v-**

**RAJENDRA GOUNDAR**

**Counsel** : **Ms. L. Latu for the State**  
**The accused in person**

**Date of hearing** : **14 January 2015**  
**Date of Ruling** : **16 January 2015**

**VOIR DIRE RULING**

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 21.7.2014 and charge statement dated 21.7.2014. The accused objects to the admissibility of this document on the following grounds filed by him on 30.10.2014.
  - (i) He is an illiterate man
  - (ii) Three police officers hit him more than 15 times
  - (iii) A round bar was used on his legs to torture him
  - (iv) He was threatened to sign the statement
  - (v) He signed because he was physically forced to do so.
  
2. The test of admissibility of all confessional statements made to the Police officers is whether those were 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 Sections 13 & 14 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 the tyranny of fear.’ *Ibrahim v R (1914) A.C. 559; DPP v Pin Lin (1976)A.C. 574.**

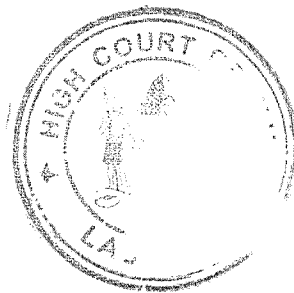
*Secondly, even if such voluntariness is established, there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of over bearing the will, by trickery or by unfair treatment. *Regina v 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 1<sup>st</sup> witness was DC 3849 Makitala. She was the investigating and arresting officer in this case. On 20.2.2014 she was directed by the Station Officer to attend to case of rape. She had gone to accused's house with a police driver. The accused was not at home. He was found drinking with a taxi driver. The accused was arrested after informing the allegation. The accused cooperated with the arrest. He was arrested around 7.00-8.00 p.m. and brought to the police station and handed over to officers there. He was interviewed the following day. She identified the accused in Court.
  10. Although this evidence was explained to the accused he did not cross examine this witness.
  11. The 2<sup>nd</sup> witness for the prosecution was DC 3237 Aveen Kumar. He had caution interviewed the accused on 21.7.2014. It was done in his computer in Hindi language. Surendra Prasad was the witnessing officer. He identified and tendered the Hindi interview notes marked VD 1A and the English translation marked VD 1B. The accused gave answers to the questions asked by him. The accused did not make any complaint at any time. He did not see any injury on the accused and he was normal. A reconstruction was done during the interview. No assault or verbal abuse during the reconstruction. He identified the accused in Court.
  12. Under cross examination he denied seeing an officer assaulting the accused in front of him.
  13. The 3<sup>rd</sup> witness for the prosecution was DS Surendra Prasad. He was the witnessing officer of the caution interview. He gave evidence confirming the evidence of Aveen Kumar. He identified VD 1A and VD 1B. He was present throughout the interview. The accused did not make any complaint. He was present during the reconstruction. He identified the accused in Court.
  14. Under cross examination he denied hitting the accused on ears. He denied threatening the accused that if he will not speak the truth he will be hit. He denied coming from accused's back and banging on both ears. He denied that the accused was interviewed for 40 hours.
  15. The 4<sup>th</sup> witness for the prosecution was DS Anoop Kumar. He had charged the accused on 21.7.2014. It was in Hindi language. Before the charge no complaint was made by the accused. The accused answered the question asked by him. It was translated to English. He identified and tendered the original marked VD 2A and translation marked VD 2B. He

did not assault or threaten the accused at any time. Although this evidence was explained to the accused he did not cross examine this witness.

16. After the close of the prosecution case, I found a case to answer from the accused in the trial within the trial. The accused was explained his rights.
17. The accused gave evidence. He stated that he did not give the interview by himself. Police officers tortured him. He was forced, threatened and hit by police officers. He was assaulted on ears. As he could not take this torture, he admitted everything they said to save himself. He was beaten so much and he could not take any more he had to say yes.
18. Under cross examination he stated that he was hit on his ears and on his legs with iron rods. He was made to sleep on the ground with his legs together. In between his legs an iron rod was put. They tried to roll that. He did not tell the Magistrate about this as he was frightened. If someone does something bad to him he will report that. But he was frightened to report. He admitted that he was taken to a doctor that day. But he was beaten after that. He did not ask the Magistrate to go for another medical as he was not ready and his body was paining. He denied lying to court.
19. I have carefully considered the available evidence in respect of the caution interview on 21.7.2014 and the charge statement on 21.7.2014 of the accused.
20. Accordingly, I have come to the view that in regard to allegation of assault, force and threat at the station by the police officers, the state had satisfied me beyond reasonable doubt that those did not happen. There were no injuries on the accused. I reject the evidence of the accused that he was forced and assaulted during the caution interview. I am satisfied that the interview and charge statement 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.
21. The caution interview of the accused on 21.7.2014 and the charge statement on 21.7.2014, being voluntary made and not created out of oppression are therefore admissible in evidence.



  
Sudharshana De Silva  
JUDGE

At Lautoka  
16<sup>th</sup> January 2015

Solicitors: Office of the Director of Public Prosecution  
The Accused in person