

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

**CRIMINAL CASE NO. HAC 140 OF 2012**

**STATE**

**-v-**

**PENI ULABALE**

**Counsel:** Mr S. Babitu for the State  
Ms S. Nasedra for the Accused

**Dates of Hearing:** 17th-18th August, 2015  
**Date of Ruling:** 20th August 2015

**VOIR DIRE RULING**

1. The State seeks to adduce into evidence the cautioned interview statement of the Accused made at the Tavua Police Station on 6th October, 2012.
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 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. Accused objects to the admissibility of his interview on the grounds:
  - i. That he was harassed and ill-treated and physically assaulted while being interviewed and charged.
  - ii. That he was not fit and in an unstable state of mind to go through the interview and charging process.

- iii. That he was not medically examined before and after the interview and charging process and denied his due rights under the Judge's Rules to determine if he was fit to be interviewed.
- iv. That there was no witnessing officer present during the course of the interview and the charging but was one to one process.
- v. That his rights were not given to him, nor was he given any break during both interview and laying of the charges against him.
- vi. That his confession was made involuntarily under extreme duress.
- vii. That the process of investigation was abused by the police officers and the Judge's Rules and guidelines to be followed by police officers whilst charging were not applied.
- viii. That he was unlawfully detained by the police before being medically examined to determine if he was fit to be detained.
- ix. That the confession was acquired involuntarily.
- x. That the time commenced and concluded is defective in respect of conducting the investigation.

4. Now I look at the evidence presented in the inquiry.
5. The Prosecution called two Police Officers to give evidence. Interviewing Officer Alanieta was called first. She told that she had been a Police Officer for 10 years. She was based at Tavua Police Station on the 06th of October 2012. On that particular day she was instructed to conduct the interview of Peni Ulabale who was suspected of having committed a sexual assault on a girl.
6. She did not observe any injury on the Accused. Accused did not complain of anything before or during the interview.
7. She said that the interview was not witnessed by any other officer. Other officers were busy with other duties and no officer was available to witness the interview. She stated that the caution interview was recorded in iTaukei language and then the same was translated into English. Accused did not wish to read the statement. She did not read it back either to the Accused before signing.
8. She stated that the Accused was not physically assaulted nor was he placed under duress. He was normal and fit to be interviewed. She denied all the *voir dire* grounds that had been raised by the Accused. Caution interview statement was marked and tendered in evidence.
9. Under cross-examination, Officer Alanieta said that everything that was informed of or cautioned of was recorded in the caution interview statement. She admitted that the fact that the Accused was given the right to a Legal Aid Counsel was not recorded in the caution interview statement.



10. She also admitted that every event and occurrence that took place at the Tavua Police Station were to be recorded in the Station Diary. However, she admitted that there was nothing in the Station Diary to show that the interview of Peni Ulabale took place on the 6th October, 2012. She said that she must have forgotten to give proper instructions to record that in the Station Diary.
11. She also admitted that the victim in this case is a daughter of a fellow Police Officer of Tavua Police Station and that that officer was friendly with her.
12. The Charging Officer Aminiasi Tuvura gave evidence next. He confirmed that there was no witnessing officer during the charging of the Accused. He tendered the charge statement of the Accused in evidence. He admitted that there was nothing recorded in the Station Diary about charging of the Accused. He also admitted that right to a Counsel was not given to the Accused before charging.

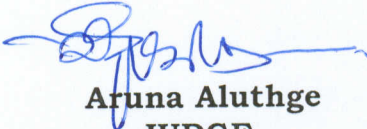
### **Analysis**

13. The burden is on the Prosecution to prove beyond reasonable doubt that the confession was obtained fairly and voluntarily. If it was not obtained in a fair manner the Court has discretion to exclude the confession.
14. Interviewing Officer agreed that the offence with which the Accused is charged is a serious offence. She also agreed that when a cautioned interview is being held in respect of a serious offence, presence of a witnessing Officer as a practice is required. There was no Witnessing Officer present at the interview as well as at the charging. There is nothing to show in the Station Diary of the Tavua Police Station that such an interview or charging ever took place on the 06th of October 2012. No one is there to confirm evidence of the interviewing officer and the charging officer that the interview and charging process were conducted fairly and properly.
15. Interviewing Officer admitted in her evidence that the Accused was not cautioned before the commencement of the reconstruction. After a break and before recommencement of the interview the Accused had to be cautioned but the Interviewing Officer had failed to do so.
16. Interviewing officer had not asked whether the Accused could read iTaukei and failed to read the statement back to the Accused before signing.
17. It is not clear that the Accused was properly informed of his right to Counsel before the interview. Charging officer specifically stated that he

did not give that right to the Accused. There is no acknowledgment recorded from the Accused in the cautioned interview statement that such a right was given. If Constitutional rights are not given and if the Prosecution fails to prove that such a denial is prejudicial to the Accused, court can exclude the confession in its discretion.

18. I am of the view that the interview has not been conducted properly and fairly. As the victim involved in this case is a daughter of a fellow Police mate, greater caution should have been taken by Police officers before recoding a confession.
19. Therefore, I decide that the confession has not been recorded fairly and properly. I hold that the caution interview statement and the charge statement cannot be led in evidence and not admissible.



  
**Aruna Aluthge**  
**JUDGE**

**At Lautoka**  
**20<sup>th</sup> August 2015**

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