

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 285 of 2015

[CRIMINAL JURISDICTION]

STATE

V

MENI RAITEKITEKI

Counsel : Ms. K. Semisi with Ms. S. Tivao for State
Ms. T. Kean with Mr. R. Goundar for Accused

Dates of Hearing : 14th-16th November 2016

Date of Ruling : 17th November 2016

VOIR DIRE RULING

1. The prosecution intends to use the confessions recorded in the cautioned interview statement (tendered during the hearing as VDPE1 & VDPE1A) and the charge statement (tendered during the hearing as VDPE2 & VDPE2A) against the accused during trial. The defence challenges the voluntariness of the two statements based on the following grounds;

- a) *That his admission and/or confession were obtained by verbal intimidation, coercion, pressure, threats and misrepresentation by the police officers from those that interviewed him to those that charged him namely, DC 2966 Jone Makutu, DC 5090 Inoke, DC 3573 Daniele, DC Tuimereke.*

- b) *That he could not properly understand the caution interview and he was told to just sign the caution interview.*
- c) *That he was physically assaulted and clearly recognizes their faces. He was beaten with a baseball bat/baton and punched in the face, nose and chest. He was also kicked.*
- d) *That he was verbally abused and forced to admit the allegations.*
- e) *That he was kept in custody for more than 48 hours.*
- f) *That he was not allowed to see any visitors namely his brother Rupeni who tried to visit him on Wednesday (19th August, 2015).*
- g) *That after the interview his caution interview was not read back.*
- h) *That after he was assaulted he was denied basic health care when he requested for it.*

2. Seven police officers who dealt with the accused from the time of arrest to the time the accused was produced in court gave evidence on behalf of the prosecution. Except for the first witness who was the arresting officer, the other witnesses said that the accused was not assaulted or forced while he was in police custody at the Valelevu Police Station. According to them, the accused made the confessions voluntarily.
3. The arresting officer said in his evidence in chief that he cannot recall whether he assaulted, abused or threatened the accused during arrest and he cannot also recall whether any other officer assaulted, abused or threatened the accused in his presence. He admitted that he did not give the accused any other right apart from informing the reason for the arrest.
4. It was also revealed during evidence that *inter alia*;
 - the accused was not allowed to communicate or be visited by his relatives;
 - that he was kept in police custody for more than 48 hours before being produced in court;

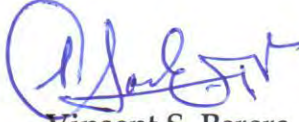
- that the Station Diary does not contain corresponding entries pertaining to the time the accused was interviewed and charged; and
 - the time certain events were recorded in the Station Diary does not match with that of the cautioned interview and the evidence given in court.
5. The accused gave evidence and said that he was interviewed under caution on the 20th August 2015 and not on the 18th and 19th August as stated in VDPE1. It was pointed out that the entry number 84 in the Station Diary on 20th August 2015 indicates that the accused was released from the Cell for interview. According to the defence, this entry confirms the fact that the accused's cautioned interview commenced on the 20th and not on the 18th. The accused's evidence was that he was assaulted on the 18th and the 19th and interviewed under caution on the 20th. He said he was not assaulted during the cautioned interview but only threatened. He said he gave the answers during his cautioned interview out of fear as he was threatened that he will be assaulted again.
6. Accused also called a witness who was kept at Valelevu Police Station from 18th to 20th August 2015. This witness said that he witnessed the accused being assaulted by the police when he was at the Valelevu Police Station. Third witness for the defence said that he once took some food to the accused when the accused was kept at the Valelevu Police Station and he was not allowed to see the accused. He could not remember the date. Defence also says that the accused was not allowed to have visitors because the accused was having injuries.
7. In this case, when the following factors are taken together, creates a reasonable doubt as to whether the accused was subjected to oppression before he was interviewed and then formally charged;

- a) the fact that the arresting officer said in his evidence on more than one instance that he could not remember whether the accused was assaulted during arrest;
 - b) the discrepancies between the evidence and the relevant entries in the Station Diary;
 - c) the failure to allow the visitors to see the accused; and
 - d) the failure to comply with the constitutional requirement of having the accused produced within 48 hours without a valid reason.
8. The mere fact that an accused was kept in police custody for more than 48 hours itself may not affect the voluntariness of a confession made by the accused. (**Maya v State** [2015] FJCA 19; AAU0053.2011; 27 February 2015) However in this case, there was no proper justification for failing to produce the accused in court within 48 hours. According to the charge statement (VDPE 2), the charging process was concluded at 09.50 am on 20th August 2015 but the accused was produced in court on the next day. The reason given by the investigating officer for not being able to have the accused produced on the 20th was that he had to spend about 2 hours at the CRO office to obtain the previous convictions of the accused. This is not a valid reason for the failure to produce the accused in court within 48 hours.
9. In my view, the lack of a valid reason for the delay in producing the accused in court and the prosecution's failure to have the discrepancies in the Station Diary sufficiently explained through the relevant witness tends to work in favour of the defence, where they take up the position that the reason for the delay in producing the accused in court and for the discrepancies in the diary is because the accused was assaulted during the first two days after arrest before recording the interview on the 20th.

10. Considering all the evidence, I am not satisfied that the prosecution has proved beyond reasonable doubt that the confessions in the cautioned interview statement and the charge statement in this case were made voluntarily.

11. In the circumstances, I hold that the cautioned interview statement (VDPE 1) and the charge statement (VDPE 2) are not admissible in evidence.




Vincent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Office of the Legal Aid Commission, Suva