

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 223 of 2015

STATE

v.

IOWANE RATAWAKE

Counsel: Ms. Kumar D. for State
Mr. Tawake P. for Accused

Date of Hearing: 22nd November 2016

Ruling: 23rd November 2016

R U L I N G

[Voir Dire]

1. The accused Iowane Ratawake challenges the admissibility of his caution interview statement made to the Levuka Police on 08/06/2015 on the following grounds.

1. That his admission and confession were obtained by force and oppression before his interview.

2. That before the interview the interviewing officer told him to admit to the allegation to make things easier for them and him and to expedite his court case.
 3. The record of interview was never read back to him.
 4. That there were no breaks and meals during the interview.
 5. He was detained in police custody for more than 48 hours from the time of the arrest.
 6. That there was a breach of his rights under the 2013 Constitution and the Judges Rules whilst he was detained by Police.
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2. The burden is on the prosecution to prove beyond reasonable doubt that the confession was made by the accused voluntarily and without oppression. The burden is also on the prosecution to prove beyond reasonable doubt that the statement was obtained without any breach of constitutional rights and that if there were such breaches, there was no resulting prejudice to the accused.
 3. State called the interviewing officer DC Vonivate Vateitei, Witnessing officer DC Manoj Kumar, WPC Mere Mokuia and PC 2502 Viliame Rokoga to give evidence. Accused gave evidence for defence.
 4. There is no dispute that the accused was arrested by DC Vonivate at Navukailagi village in Gau and was taken to the Qarani Police post on 08/06/2015. Also there is no dispute that, from there the accused was taken to Levuka Police Station by a boat which took about 2 – 3 hours.

5. Accused in his evidence admitted that no force was used on him to admit committing the alleged offence. However, his evidence was that DC Vonivate asked him to admit to make things easier. DC Vonivate in his evidence admitted that he asked the accused about the allegation against him whilst he was being taken to the Qarani police post. He denied asking the accused to admit. The accused had not complained to anyone of this, but in cross examination he said that he told his father when he visited him at the police station.
6. Accused also said that PC Vonivate is a relation of his and that he calls the accused 'uncle'. On his own evidence the accused admitted that no force was used on him, and that the police officer being related to him, he could have told the police officer that he denies the allegation. The accused further said that he admitted because he respected the relationship with the officer, which is highly improbable and cannot be accepted. I find that the evidence of the interviewing officer was truthful and that the accused's evidence was far from the truth when he said that he admitted because he respected the relationship of DC Vonivate.
7. Recording of the interview had commenced at 16.15 hours on the same day he was arrested and concluded at 17.53 hours. It has taken less than 2 hours.
8. On giving breaks during the interview, DC Vonivate said that the accused was allowed to go and drink water from the tap. However, he has not recorded it. Accused never said in evidence that he asked for

breaks. Accused admitted that before the interview he was given lunch. He also admitted that he was given about 2 hours to rest, take a shower and to have lunch before the interview statement was recorded.

9. DC Vonivate said that although he asked the accused whether he wished to read the interview or wanted it to be read to him, the accused said 'no its ok', as recorded in the interview (Q & A 49). I find that DC Vonivate was truthful when he said that. The position taken by the defence was that the accused admitted because DC Vonivate asked him to admit, and not that he did not admit.
10. The caution interview statement of the accused was recorded on the same day he was arrested. The accused was charged the following day the 9th June 2015. It was evident that the accused had to be brought to Suva Magistrate's Court on the 10th as they had to arrange the passage from Levuka.
11. Therefore I find that although the accused was produced before the Magistrate a few hours after lapse of 48 hours, that delay is justified. That delay has not caused any prejudice to the accused in the recording of the caution interview statement as it was recorded the same day he was arrested. Hence, I find that the accused made the caution interview statement voluntarily and without oppression. I also find that no rights of the accused were breached. Prosecution has proved the same beyond reasonable doubt.

12. I find that the above grounds urged by the accused are without merit. I hold that the caution interview statement be admitted in evidence.




Priyantha Fernando
Judge

At Suva

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused.