

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 88 OF 2013

BETWEEN : STATE

AND : AMINIASI MASEI

Counsel : Mr. S. Babitu for State
Miss. S. Nasedra for the Accused

Date of Hearing : 11th of July 2016

Date of Ruling : 12th of July 2016

RULING ON VOIR DIRE

Introduction

1. The prosecution proposes to adduce the caution interview of the accused in evidence. Consequently, the accused informed the court that he is objecting to the admissibility of the caution interview in evidence on the following grounds, *inter alia*;
 - i) *That his confessions were obtained involuntarily through intimidation and verbal threats by the police officers present during his caution interview:*
 - ii) *That he was not asked if he clearly understood the general Bau I'taukei dialect as he only clearly understood the Nadroga dialect as such he did not clearly understand the entirety of his caution interview and charge.*

- iii) That he was only told to sign his caution interview and was not given the chance to read it and alter any part of it;*
- iv) That his confessions were obtained involuntarily through intimidation verbal threats by the police officers present during his charge;*
- v) That during his charge he was just asked to sign it without being given the chance to read it and alter any part of it;*
- vi) That he was not given his rights at the time of his arrest nor was he informed of the reasons of his arrest and was only told to get into the police vehicle to come to the police station, one of the police officers was Inspector Maciu;*
- vii) That he was verbally abused, intimidated and verbally threatened continuously at the time of his arrest and during his transportation from the place of arrest to the Lautoka Police Station, that the police officers present during the arrest and also during his transportation to Lautoka Police Station began to put the allegation to him without any caution.*
- viii) That he was verbally abused, intimidated and verbally threatened that he would be beaten if he didn't admit to the allegation both by the interviewing officer and also other officers that were present before the commencement of the interview and during the interview and threatened to confess to the offending or else he would be physically assaulted.*
- ix) That he was not properly and fully informed of his rights at the commencement of his caution interview as a result did not understand his rights and could not exercise the same effectively.*

x) That he was not cautioned prior to the reconstruction and also after the reconstruction at the recommencement of the interview.

xi) That he was told by one of the police officers to just admit to the offence and if he didn't he would be in danger and it would be more easier to just admit to the offence.

2. The voir dire hearing was conducted on the 11th of July 2016. The prosecution presented the evidence of two witnesses during the course of the hearing. At the conclusion of the prosecution case, the accused gave evidence on oaths, but did not call any other witnesses for the defence. Subsequently, the learned counsel for the prosecution and the defence filed their respective written submissions. Having carefully considered the evidence adduced during the hearing and the respective written submissions of the parties, I now proceed to pronounce the ruling as follows.

3. In view of the grounds of voir dire filed by the accused, it could be summarised for the convenience of consideration as follows.

i) The accused was not given his rights and was not explained him the reason for his arrest at the time of his arrest,

ii) The caution interview was conducted in a language that the accused could not properly and fluently understand,

iii) The accused was verbally threatened, intimidated and force to admit the offence,

The case of prosecution and the Defence

4. The prosecution adduced the evidence of DC Samuela, who is a member of the arresting team and DC Sailasa, who is the interviewing officer of the caution interview. DS Samuela in his evidence stated that the accused was given his rights and properly explained him the reason for his arrest. The accused properly understood the reasons given to him. He was then accompanied to the Lautoka Police station. DS Sailasa in his evidence explained the manner in which the caution interview of the accused was conducted.
5. The accused in his evidence stated that he could only speak and understand Navosa dialect. He could not properly and fluently understand Bauan dialect. He claims that the caution interview was conducted in Bauan dialect. Hence, he did not properly understand the conduct of his caution interview.

The Law and Analysis

6. Justice Gounder in State v Akanisi Panapasa (Criminal Case No 34 of 2009) has outlined the general rule on admissibility of confession, where his lordship found that;

“As a matter of general rule, a confession made by an accused person to a person in authority out of court is admissible only if the confession was made voluntarily. The rule which was developed by the English common law is the state of law in Fiji”.

7. The principle of rejection of an improperly obtained confession is founded on three main principles,

- i) Unreliability of the confession,
 - ii) Rights against self-incrimination,
 - iii) To prevent undesirable police conduct on the person in their custody,
8. Sections 13 and 14 of the Constitution of the Republic of Fiji Islands have recognised and endorsed the above mentioned three main principles.
9. The Privy Council in Wong Kam -Ming v The Queen (1982) A.C. 247 at 261 has discussed the basic control over admissibility of statement, where it was held that;

"The basic control over admissibility of statement 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."

10. The Fiji Court of Appeal in Shiu Charan v R (F.C.A. Crim. App. 46/83) and Fraser v State [2012] FJCA 91; AAU24.2010 (30 November 2012) has discussed the applicable test of admissibility of caution interview of the accused at the trial.
11. The Fiji Court of Appeal in Shiu Charan (supra) held that;

"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 the use of force, threats or prejudice or inducement by offer of some

advantage - what has been picturesquely described as "the flattery of hope or the tyranny of fear." Ibrahim v R (1914) AC 599. DPP v Pin Lin (1976) AC 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 overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ c - E." (State v Rokotuiwai - [1996] FJHC 159; Hac0009r.95s (21 November 1996).

12. The Fiji Court of Appeal in **Fraser v State (Supra)** held that

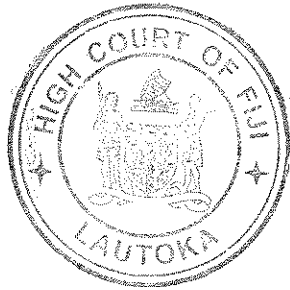
"The court shall not allow a confession to be given in evidence against him unless the prosecution proves beyond reasonable doubt that the confession was not obtained (a) by oppression of the person who made it (b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in consequence thereof"

13. The test enunciated in **Shiu Charan (supra)** and **Fraser (Supra)** constitutes two components. The first is the test of oppression. The court is required to satisfy that the statement in the caution interview has been taken without any form of force, threats, intimidation, or inducement by offer of any advantage. The second component is that, even though the court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation or inducement, it is still required to satisfy that no any general grounds of unfairness existed before or during the recording of the caution interview that could render the confession unreliable.

14. It is the onus of the prosecution to prove beyond reasonable doubt that the caution interview of the accused persons were recorded voluntarily and under fair and just circumstance.
15. I now turn onto discuss the first ground as stated in paragraph three above, that is whether the accused was given his rights and the reasons for his arrest by the arresting officers.
16. DC Samuela in his evidence stated that the accused was given the reason for his arrest. However, DC Samuela admitted during the cross examination, that it has not been recorded in the statement that he made to the police.
17. The accused claims that he was only told to get into the police vehicle and was not explained the reason for his arrest. He then said that he was questioned about this incident once he got into the vehicle. The accused stated that the officers continuously communicated with him in Bauan dialects which he could not properly understand. DC Samuela in his evidence confirmed the claim of the accused that the arresting officers communicated with him in Bauan dialect.
18. In view of the above discussed reasons, I find there is a reasonable doubt whether the accused was actually informed the reasons for his arrest in a language that he could understand.
19. DC Sailasa in his evidence stated that he found the accused was not fluent in speaking Bauan dialect. He further stated that the accused answered in Navosa dialect to the questions put to him during the caution interview. The questions were put to him in Bauan dialects. DC Sailasa further stated that he found the accused understood Bauan dialect though he could not speak it fluently.

20. According to evidence given by DC Sailasa, it has been confirmed that the accused is not fluent in speaking Bauan dialect. The evidence given by the accused reveals that he has been staying in his village since his birth and has not engaged in any employment. Accordingly, it appears that the accused has spent most of his life in an environment where people predominately speak in Navosa dialect. Hence, it is my view that the accused may have difficulties in speaking and understanding Bauan dialect, though he has completed his primary school up to class eight. Under such circumstances, I find that the conducting of his caution interview in Bauan dialects, undoubtedly renders the confession made by the accused unreliable in evidence.
21. Having considered the reasons discussed above I hold that the caution interview of the accused is not admissible in evidence.

At Lautoka
12th of July 2016



R. D. R. Thushara Rajasinghe

Judge

Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission