

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 156 OF 2014

STATE

-v-

LLOYD RICHARD SENIKAUCAVA

Counsel: **Ms J. Fatiaki for the State**
 Ms S. Ratu for the Accused

Dates of Hearing: **26th July – 27th July, 2016**

Date of Ruling: **29th July, 2016**

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the caution interview and the charge statement of the accused.
2. The test of admissibility of all confessional statement made to a 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 and charge statement on the following grounds:

- I. I was assaulted before and during the interview.
- II. The Police threw jabs on my ribs and slapped me.
- III. The Police scared me telling me that if they'd kill me they will not going to face any consequences of it.
- IV. The Police surrounded me whilst I was being interviewed by the Interviewing Officer.
- V. The Police pulled me and take chances slapping me, swearing at me, spat on my face, threw jabs on my ribs and threatened me to admit their story they convey.
- VI. The stories contains in the Caution Interview were all the stories conveyed by the Police, my duty was just to admit it to end my suffering.
- VII. The Police hit my knuckle (ring finger) in which had an old scar on it, claiming that I punched the victim.
- VIII. I was not taken to the hospital to be examined to ascertain if I was fit to be interviewed.
- IX. I did admit the story that the Police conveyed as I was in the state of fear.

4. What I am required at this stage is to decide whether the interviews were conducted fairly and whether the accused gave the statements voluntarily. If I find that the confessions were obtained violating their constitutional rights, then I can in my discretion exclude the interviews.
5. The burden of proving voluntariness, fairness, lack of oppression, compliance with constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
6. Now I look at the evidence presented at the trial within trial.

Case for Prosecution

7. Prosecution called 12 police officers, two doctors and one lay witness.

Cpl. Setefano Samoca (PW.1)

8. One of the police officers who effected the arrest of the accused Lloyd Senikaucava. When Cpl. Samoca was attached to the Sigatoka Police Station, he went to the interior of Navosa on the 13th of November, 2014, with a team of 12 police officers in search of the accused who was wanted for a Murder case.
9. They walked in the Highlands to reach Natukalevu Settlement. They divided themselves into two groups and went in different directions in search of the accused. About 6.30 a.m., the team led by him came to a house. Upon inquiring, owner of the house informed that Lloyd was sleeping inside the house. Constable Mesulame Sogo went in and brought Lloyd out of the house and handcuffed. Then they escorted Lloyd down to Nawairabe where vehicle was parked. Lloyd was not assault or threatened. They escorted Lloyd to the Sigatoka Police Station.
10. Under cross examination, witness conceded that Miranda right was not administered to the Accused during arrest. He admitted that Ratu Vili and Gavidi were also took part in the raid. However, he denied that he saw Ratu Vili punching Lloyd at any time.
11. He also denied that, on their way from Natukalevu Village to Nawairabe Village, accused was assaulted and exposed to duress.
12. Under re-examination, he described Miranda rights as Constitutional Rights that have the effect of informing a suspect the reasons for arrest.

PC Mesulame Sogo (PW2)

13. Constable Sogo was called as the next witness. He was in the team of police officers that arrested the accused. He went with Cpl. Samoca to the house where accused was staying. On the 14th of November 2014 around 6.30 in the morning, they reached Natukalevu Settlement. They were informed by an iTaukei man that Lloyd was sleeping inside a house. Upon instructions of Cpl. Samoca, he went and arrested Lloyd inside the house.

By grabbing the t-shirt, Lloyd was awakened. Then Lloyd came outside the house where he was explained the reason for arrest. Lloyd was not assaulted, threatened or forced.

14. Under cross examination witness denied that officer Ratu Vili punched the accused on his chest and stomach. He also denied that Ratu Vili threatened to whack the accused with a crowbar.

Constable Peni Vunisa (PW3)

15. Constable Vunisa escorted the accused to Sigatoka Hospital on the 14th of November 2014. Accused was not assaulted or threatened. No complaint was received by the accused. Accused was seen by a doctor at the hospital. He accompanied the accused back to the police station and handed him over to the Station Orderly.
16. Under cross examination, he said he briefed the doctor about the accused and part of his brief was for the Doctor to check accused's knuckles.

Arvind Sharma (PW4)

17. Whilst officer Sharma was based at the Sigatoka Police Station in his capacity as the Station Orderly, Lloyd Senikaucava was brought in by OC Sigatoka, Cpl. Samoca and his team around lunch time on 14th November 2014. He made notes in respect of accused's movements in the Station Diary. After a few minutes, accused was taken to the Sigatoka Hospital for a medical check-up. Witness recognised the Station Diary and the entries he made on the 14th November, 2014 and read out to Court entries in respect of accused's movements and meals. He did the afternoon shift of 15th November and read out the relevant entries pertaining to accused's movements and the interview. He did not see accused being assaulted at the police station nor he received any complaint. Accused appeared normal right throughout.
18. He was also on duty on the 16th of November 2014 doing afternoon shift. He related all the relevant entries and tendered them in evidence. Officer Sharma's evidence was not subjected to cross examination.

DC Alivereti Naulumatua (PW5)

19. DC Naulumatua, as the Station Orderly, whilst doing the morning shifts, recorded the movements of the accused on the 15th and 16th of November, 2014. He read in evidence all the relevant entries he made whilst engaged in morning shift duties on the 15th and 16th of November, 2014. Lloyd did not complain of anything. He did not see the accused being assaulted, threatened or forced by any police officer at any time that he came into contact with the accused.
20. Witness, under cross examination, said that he could not recall if he blamed or used his fist to knock on accused's head because he was ashamed of accused who was from the same village as him.

Miliano Tuilawaki (PW6)

21. On the 14th of November 2014, about 1500 hrs Officer Miliano received instructed from Crime Officer, Sigatoka, to be the Witnessing Officer of a murder case whereby Lloyd was interviewed by Detective Women Constable Mereseini. Interview commenced at 1600 hrs. at the Crime Office of the Sigatoka Police Station.
22. He came to know that Interviewing Officer DWC Mereseini is currently overseas, having resigned from the Fiji Police Force.
23. Interviewing Officer DWC Mereseini and Lloyd were present throughout the interview which he witnessed. Interview was conducted in English. Record of interview was signed by the accused and the officers present including him. He tendered the Interview record marked as Prosecution Exhibit No. 3.
24. Accused was given his constitutional rights. He was not assaulted, threatened or forced by any officer during the interview. Accused was given sufficient breaks during the

interview. Referring to the interview record, witness pointed out the time slots in which breaks were given to rest, to have a shower, to have meals and also to meet his brother.

25. On the 16th November, 2014 at 1240hrs interview was suspended for Lloyd to be taken for re-construction of the scene in which he also participated with DC Baseisei. During reconstruction of the scene, no one assaulted, threatened or forced the accused. Interview resumed at 1440hrs.
26. Interview was concluded at 1910 hrs. Accused was allowed to read the caution interview at the conclusion. Lloyd answered the questions asked by interweaving Officer Mereseini Naqiri. Lloyd did not complain of anything though he looked a bit worried. Accused was provided with meals and explained the right to Counsel and right to communicate with a family member.
27. Under cross examination, witness denied that PC Iliesa Ratuva visited the Crime Office during the interview asking to see the accused. He admitted that there is an entry in the Station Diary that PC Ratuva called in to see the suspect at the Station. He denied, however, that he had seen PC Ratuva punching the accused on his ribs and threatening to agree to all questions put to him in the caution interview.
28. He denied that his evidence about breaks given to the accused to rest and see his brother had been fabricated because there was no entry in the Station Diary to that effect. He also denied that ASP Qica slapped the accused on his face.
29. Under re-examination, witness said that the Station Diary was located in a different building about 10 meters away from the Crime Office and was being handled by somebody else.

PC Sailosi Rokomatu (PW7)

30. PC Rokomatu was in the team for reconstruction. He said that accused was never assaulted or threatened during reconstruction which took place in Kulukulu where the body was found.

PC Ashwin Chand (PW8)

31. PC Chand charged the accused. He said that the charging took place on the 16th of November 2014 at the Crime office of the Sigatoka Police Station from 1929 hrs. to 1940 hrs. Sargent Rauto was also present witnessing the interview.
32. Prior to charging, accused did not complain of anything. He or any other officer assaulted, forced or threatened the accused. Accused was cautioned and explained his right to counsel. Charge statement given by the accused on his own free will. At the end of the charge, the statement was given to the accused to read, alter, add or correct.
33. Witness tendered the Charge Statement marked as PE. 4

Mr. Sitiveni Kunaika (PW9)

34. Witness Kunaika held the position as a Justice of Peace in the Sigatoka area. He was approached by Police Inspector, Bari, and was requested to help in the recording of the statement of the accused. He had the opportunity to speak to Lloyd on the 17th of November 2014. During this conversation Lloyd did not complain of any assault or threat he received from the Police. Lloyd told him that the statements were given freely without any force being used on him.
35. Under cross examination, witness admitted that his niece is legally married to the deceased's boyfriend, Hara.

Dr. Mohammed Alvis Zibran (PW10)

36. Dr. Zibran examined the accused Lloyd Senikauca on 14th November, 2014 at 1435 hrs. and prepared a medical report. Relaying the history of the pain in his right knuckles, patient had told the doctor that he assaulted a lady 2 weeks prior to the examination.

37. Patient did not complain of anything other than the pain on his right knuckles. There was a scar on the right ring finger and the knuckle. The x-ray findings did not reveal any fracture. Patient looked very calm. Police officers did not interfere with the examination.

Dr. Neelam Pillay (PW11)

38. On the 17th of November Dr. Pillay examined Lloyd and prepared a report. Patient was brought to her with an alleged history of being assaulted by police officers on his chest and stomach with punches during his arrest. Patient was wishing to be medically examined.
39. Patient was well oriented and was not in obvious distress. History given by patient was not supported by medical findings. Visible injuries were not found either on patient's chest or abdomen. He did not complain of pain.
40. Under cross examination, doctor ruled out the possibility of not having noticeable assault marks because injuries had healed. If he received multiple punches on his chest and abdomen, they should have left a mark.

DC Misidomo Baseisei (PW12)

41. DC Baseisei was the Investigating Officer in this matter.
42. On 14th November 2014, accused was brought to the station under arrest. He did not complain of anything. Photographs were taken to document any physical injuries he might have sustained. Accused was also taken for a medical examination to hospital.
43. Accused's hand where he saw scars was photographed. Apart from that mark he could not see any other injury on his body. Accused was interviewed by WDC Mereseini inside the Crime Office which is a separate building from the main station. Corporal Miliano acted as the witnessing officer.

44. He paid several visits to the interview room to check them when the interview was underway. He or any other officer did not threaten or force him make a statement.
45. The accused was taken for a reconstruction of the crime scene in a farming area of Vunavutu. He took part in it with some other officers including interviewing officer and witnessing officer. Accused was not assaulted, threatened or forced.
46. When accused was brought back to the station, he was visited by his younger brother at the crime office. Accused was taken to hospital on the 17th on accused's request and also to follow procedures. Accused did not complain about any assaults by other officers.
47. Under cross examination, witness denied that he put back deceased's skirt that Miliano had earlier found in to the bushes so that photographs could be taken. He also denied having witnessed ASP Samisoni slapping and spitting on accused's face and threatening to kills him.

Analysis

48. I find the evidence by the witnesses called by the prosecution is plausible and believable. There is no evidence before this court to find that the accused was assaulted, threatened or forced to give a confession to police offices. There is no evidence of unfair treatment at the arrest, during caution interview or charging. There is also no evidence that the Accused's constitutional rights had been violated in such a way so that recording of the caution interview and charging had been prejudicial to the accused.
49. PW.1 and PW.2 gave evidence in respect of accused's arrest. Both of them said that no assault or intimidation took place during arrest or transportation to the police station. They corroborated each other and were consistent in their respective evidence.
50. Arrest had been effected in a in a hilly and remote interior place. After the arrest, they had to walk up to the police vehicle as there was no motarable road. The reason given for the delay of nearly ½ an hour occasioned during escorting of the accused to the vehicle is acceptable and believable. Although the team of 12 officers comprised officers by the

name of Ratu Vili and Gavidi, both witnesses denied that they assaulted the accused whilst being escorted to the police station. Accused had not mentioned these two names in his *voir dire* grounds. If accused had been assaulted by these officers (known to him by name) he could have specifically mentioned their names in the *voir dire* grounds.

51. PW.1, under cross examination, conceded that accused was not administered the 'Miranda Rights'. Under re-examination, PW.1 described 'Miranda Rights' as the 'right to be informed of the reason for arrest'. It would seem that PW.1 had misconceived the meaning of 'Miranda Rights'. However, his evidence is not that curtail because he was not the one who actually arrested the accused. Accused's actual arrest was effected by PW 2 who entered the house. PW.2 was not questioned as to whether he administered the 'Miranda Rights' when he effected the arrest.
52. Accused had not taken up a position in his *voir dire* grounds that he was denied his constitutional rights during arrest. There is clear evidence that the accused was informed of the reason for arrest at the time of the arrest.
53. What is important in this proceeding is whether the accused had been administered the Miranda Rights before the caution interview, and not during the arrest. There is clear evidence that accused had been administered Miranda Rights in the form of Judges Rules No.2 before the interview and charging took place.
54. I am satisfied that the accused had been properly cautioned before the interview and charging and no prejudice has been caused to the accused by the alleged right violation during the arrest.
55. Credibility of the prosecution evidence was challenged on the basis that the caution interview is inconsistent with the entries of the Station Diary. When cross examined, PW 7 conceded that there was no entry in the Station diary that the brother of the accused had visited the accused in the police Station during caution interview on the 15th November, 2104.

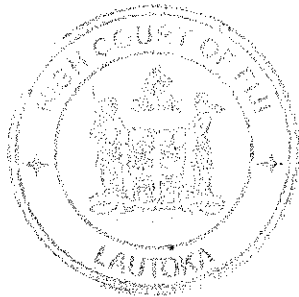
56. It is clear from evidence that the Station Orderlies who had maintained the Station diary had not participated in the interview process. They were based in the main building whereas the interview had been conducted in the Crimes Office which was a separate building. Interviewing Officer or witnessing officer had not made any entries in the station Diary. Therefore, witnessing officer who gave evidence is not in a position to explain the discrepancy between the Station Diary and certain statements of the record of interview. Station Orderlies who made the entries were never questioned nor given an opportunity to explain the discrepancies.
57. PW 13 clearly stated that the accused's brother came and saw him whilst he was in the Crimes Office. His evidence is consistent with the contents of the interview.
58. On the 17th November, 2104, soon after the interview and charging, PW. 10, the justice of the peace of the area had visited the accused in the police Station. When questioned if he was assaulted, accused had told PW 10 that he was not assaulted, threatened or forced by police officers to confess to the murder.
59. PW 10 conceded his niece was married to the deceased's boyfriend Hara. However, there is no evidence before the court to come to the conclusion that PW.10 is biased towards the prosecution or he lied to this court about what he heard from the accused.
60. After the arrest and before the interview accused had been taken to a doctor on the 14th November, 2014 to document visible injuries on accused's body. Accused had told Dr. Zibran (PW. 11) that he assaulted one lady relaying the history of the pain in his right knuckle. Except the pain in his knuckles, accused had not complained of any pain or injury.
61. The accused had been seen by the Dr. Neelam Pillay (PW.12) on the 17th November, 2104 soon after the interview and charging on a request of the accused. Doctor had not noted any injuries on accused's body even though accused had related that he was assaulted on his chest and stomach with punches during arrest. Even the X ray had been normal. She found the accused well oriented and normal during the investigation. She


prescribed Panadol even though she received no complaint of a pain. Doctor ruled out possibility of the possibility of wounds being healed by the time of the examination.

62. Evidence shows that accused had been provided meals properly. He had been given time to rest and to have a shower. He has been allowed to speak to his brother during the interview. There is no evidence to show that accused was treated unfairly during arrest, interview, charging or reconstruction. No complaint has been made by the accused to any officer.
63. On behalf of the accused, no evidence was adduced. Credibility of the Evidence of the Prosecution was not successfully challenged. Defence failed to create any doubt in the Prosecution case. Burden of proof was on the Prosecution to prove that the accused made the confession voluntarily. Prosecution discharged that burden.

Conclusion

64. Prosecution proved that the accused's interview and charge statement were obtained voluntarily and fairly. I hold the cautioned interview statement and the charge statement of the accused to be admissible in evidence.




Aruna Aluthge
JUDGE

At Lautoka
29th July, 2016

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