

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 163 OF 2013

STATE

-v-

VINIT VIKASH CHAND

Counsel : Mr. Seruvatu with Ms. Kiran for State
Ms. P. Chand with Ms. Singh for Accused

Date of Hearing : 18th September, 2017

Date of Ruling : 19th September, 2017

RULING ON VOIR DIRE

1. The Prosecution seeks to adduce into evidence the record of cautioned interview of the Accused recorded at the Nadi Police Station.
2. The Accused challenged the admissibility of the caution statement on following grounds:
 - I. That his confessions were obtained involuntarily through pressure, duress and force by the police at the Nadi Police Station.

- II. That on 16/07/12 he was arrested and taken to the Nadi Police Station.
 - III. That at the police station he was beaten up by an Indian police officer by the name of Vishaal.
 - IV. That at the police station he was also beaten up by an itaukei police officer. He was hit on his chest and punched on his back. He was hit with a hammer on the toe of his right leg.
 - V. That the interviewing officer Vishaal wrote the question and answers in Hindi language and never explained what was being written to the accused. The accused was hit when he refused to sign at the places where he was indicated to sign by the interviewing officer.
 - VI. That the accused does not know how to read or write in Hindi yet his interview was taken in Hindi language.
3. 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.
 4. What I am required at this stage is to decide whether the interview and charge 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 and charge statements.
 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.

Analysis

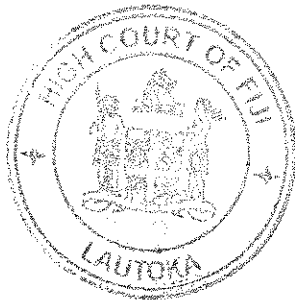
6. Two police officers including the interviewing officer adduced evidence for Prosecution. I am satisfied that they told the truth to this Court.
7. Interview has been conducted under caution. Accused was properly accorded his legal rights. Although he was not explained his right to counsel when the interview resumed at 9.15 a.m. on the second day (17th July, 2013), he had been cautioned. When the interview recommenced at 7.00 a.m. on 17th July, 2013, his rights including the right to legal representation had been explained. Therefore, no prejudice was caused to the Accused.
8. On the first day of the interview, Accused's father was allowed to be present at the interview. On the second day, his mother and Pundit who is his uncle had visited him when the interview was in progress. He had even talked to his mother and Pundit.
9. The interview had been conducted in Hindi, the language of his choice. Although the interviewing officer told in his evidence-in-chief that the Accused had read the record of interview he, under cross examination, admitted that the record was read back to the Accused upon his request. Questions 105 and 106 show that the record of interview had been read back to the Accused in Hindi. Accused had signed the record acknowledging that it was read and explained to him. It is not unfair for police officers to read and explain the content of the record when an accused does not assert his right, even though it is properly accorded.
10. Evidence of the Accused is completely unsatisfactory. Although he is under no obligation to prove that the record of interview is not a voluntary statement, his untrustworthy evidence did not cast any doubt on unshaken version of the Prosecution.
11. Accused had suppressed his name when the police team visited him at his work place. He said that he was manhandled and punched by police officers when he was loaded into the police vehicle after arrest. However, no such allegation has been raised in the grounds of *voir dire*. If he was punched during arrest, he

should have raised the matter with his Counsel and included it as a ground of *voir dire*. His Counsel confirmed that she had not received any instruction in this regard.

12. Accused's evidence as to police brutality is inconsistent and unbelievable. His father had been present on the 1st day of the interview. The alleged assaults had taken place when his father was in the police station. His mother and uncle had visited on day two. I have my doubts that police officers would allow visitation by family members and also his father to be present at the interview if the Accused was assaulted to such a magnitude.
13. If the Accused was punched, kicked with safety police boots and poked with iron nails, he would have received severe injuries. There is no evidence that Accused had received such injuries. There is no evidence that he was limping to court house with swollen injuries. Accused had never complained to the Magistrate or police officers about alleged assaults or made any request for a medical examination.
14. Accused said that he told police officers not to assault him as they were not allowed to do so. Even though he was not represented by a Counsel when he was first produced before the Magistrate, it appears that he was smart enough to complain to the Magistrate as he knew that police officers are not allowed to assault suspects.
15. Accused is a class-8-educated person at a Hindu school. It is unbelievable that he is not able to write or read Hindi. His evidence that he does not understand conversations in Hindi movies is unbelievable.
16. Accused admitted that he understood what the court interpreter was speaking to him in Hindi and that Vishal was also using the same language at the interview. He finally agreed that he was able to understand what Vishal was asking him in the caution interview.
17. Accused's father or Pandit had never seen any assault or heard at least a scream coming from the Accused. If his father Jagadish Chand had seen his son limping

after the 1st day of the interview, he could have complained to somebody. He had never done that.

18. Evidence of the Defence is not appealing to me. I reject the evidence of the Defence. Prosecution proved that the caution interview was conducted fairly and lawfully. There is no evidence of rights violations. I am satisfied that the caution statement of the Accused has been made voluntarily. Therefore, I allow it be led in evidence.



Aruna Aluthge

Judge

AT LAUTOKA

19th September, 2017

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