

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 51 OF 2016

STATE

-v-

IFEREIMI KUBUKAWA

Counsel : **Ms. S. Kiran for State**
Ms. J. Singh for Defence

Dates of Hearing : **21 August 2018**

Date of Ruling : **21 August 2018**

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the record of caution interview and the charge statement alleged to have been made by the accused at the Nadi Police Station on 14th and 15th of February, 2016.
2. The accused objects to the admissibility of the record of interview on the following grounds:

1. The accused was interviewed at the Nadi Police Station. The confessions are involuntary since they have been obtained as a result of police brutality.
 2. That the accused was punched on the sides of his left ribs by two iTaukei police officers during his caution interview.
 3. That the accused was intimidated by two unknown police officers during the caution interview. Due to the assaults and threats the accused was forced to confess.
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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 was conducted fairly and whether the accused gave the confession voluntarily. If I find that the confession was not given voluntarily, then I can in my discretion exclude the interview.
 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. At the hearing, Prosecution called 2 police officers; the interviewing officer PC Bibi and witnessing officer DC Saiasi. Accused gave evidence for Defence.

7. PC Bibi gave evidence that on 14th and 15th of February, 2016, he conducted the interview of suspect Ifereimi Kubukawa under caution. The interview was conducted at the Nadi Police Station in iTaukei, the language preferred by the suspect. Cpl. Saiasi who was the witnessing officer witnessed the interview. The suspect was cautioned in iTaukei language which he understood.
8. PC Bibi said that all constitutional rights were given to the suspect and that the interview was conducted fairly. The suspect gave all answers voluntarily. Before, during or after the interview, nobody forced, threatened or assaulted the suspect in any way. The suspect did not make any complaint of assaults or of anything. No injuries were noted on suspect's body. The suspect was not given promises or inducements in order to get a confession from him. At the conclusion of the interview, suspect was given his right to read the interview as it was being recorded on computer and also at the end of the interview when a print-out was generated. The suspect answered all the question in iTaukei and all his answers recorded in the interview are the statements of the suspect. The suspect was given the right to alter, delete or amend the interview notes. The suspect signed the interview notes voluntarily. The original record of interview was translated into English and exhibited. PC Bibi tendered a copy of the translated version of the record of interview and read it into evidence.
9. PC Bibi under cross examination denied that, during the caution interview, the suspect was punched on the sides of his left ribs and intimidated by two iTaukei police officers. He also denied that the admissions in the caution interview were a result of police brutality.
10. Witnessing officer DC Saiasi Matarugu confirmed the evidence given by the witnessing officer. He admitted that he was not present right at the beginning of the interview and during reconstruction of the scene. He stressed that, in his presence, the suspect was never assaulted, forced or intimidated by any police officer.

Case for Defence

11. Accused Ifereimi Kubukawa said that he was questioned by two police officers, one officer was sitting down and the other officer was standing beside him. When they were questioning, he was denying the allegation. They then started punching side of his ribs. When they started punching he admitted the allegation. He said that he admitted the allegation because of the pain. He said that he read the statement after it was written down.

Analysis

12. I find that the evidence of the Prosecution to be consistent and plausible. There is a slight discrepancy between PC Bibi's evidence and the Station Diary. That discrepancy did not affect the credibility of the version of the Prosecution. The Station Diary notes had been put by another police officer who was based at the main station whereas the interview had taken place at the Crime Office which is 2-3 minutes-walk distance apart. It is possible that all the movements of officers and suspects are not recorded accurately in the Station Diary.
13. The witnessing officer DC Saiasi admitted that he was not present at the beginning of the interview and he joined when the interview was in progress and also that he was not present during reconstruction.
14. The witnessing officer had joined the interview at question No. 2. The grounds do not allege that the accused was assaulted during reconstruction of the scene. Accused himself admitted that two police officers were present during the interview. The question is whether the confession was obtained using police brutality.
15. Evidence of the accused that he was assaulted by police officers during the interview is inconsistent and implausible. The accused in his evidence specifically said that he was assaulted by the interviewing officer. However in his grounds of *voir dire* he states that during the caution interview he was

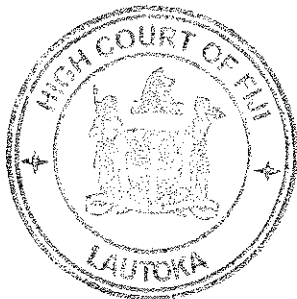
punched on the sides of his left ribs by two iTaukei police officers and intimidated by two 'unknown police officers'. If he knew that he was assaulted by the interviewing officer he could have mentioned it in the grounds of *voir dire*. However, he sates, *two 'unknown police officers'*.


16. Under cross examination, accused maintained that he was not made aware that the record of interview will be used against him. But he later admitted that he was cautioned at question No. 8 and that he signed the record of interview as an acknowledgement that he fully understood the allegation against him and the cautionary words administered to him.
17. Accused said that he received roughly about 10 quite strong blows or punches on the side of his ribs from well-built interviewing officer. He said that he was suffering from pain for about three months. However, he admitted that he did not receive any injuries or get any medical help.
18. Accused admitted that, although he spoke to the Magistrate, he did not complain that he was assaulted. When he was produced before High Court, he did not complain to the High Court Judge although he was represented by a counsel from the Legal Aid Commission.
19. Accused's conduct after the interview is completely inconsistent with his allegation of police assaults. He would have received injuries and sought medical assistance if he had received about 10 quite strong blows or punches on the side of his ribs from a well-built police officer.
20. Accused admitted that in answering questions 65 and 66 he was able to exercise his right to disagree with something which was being asked by the interviewing officer. He had denied raping her daughter and when he said "*I did not do anything to Marica*" he has exercised his freedom to disagree. The answers given at the interview denying the allegation show that the accused had exercised his right to disagree.

21. I am satisfied that the allegation of police brutality is not true. Although accused does not have to prove anything, his (untrustworthy) evidence failed to create any doubt in the version of the Prosecution that the confession was given voluntarily.

Conclusion

22. Prosecution proved beyond reasonable doubt that the accused's confession was obtained voluntarily and fairly. I hold record of caution interview to be admissible in evidence at trial.




Aruna Aluthge
JUDGE

At Lautoka
21st August, 2018

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