

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 316 of 2011

[CRIMINAL JURISDICTION]

STATE

V

RAVINDRA DEO

Counsel : Ms. S. Sharma and Mr. S. Shah for State
Mr. J. Reddy and Mr. Vulakouvaki for Accused

Hearing on : 29th January – 30th January 2018

Ruling on : 31st January 2018

VOIR DIRE RULING

1. The accused is charged with one count of sexual assault and one count of rape under the crimes Act.
2. The prosecution intends to tender the cautioned interview statement of the accused as evidence in this case. The defence objects to the admissibility of the cautioned interview based on the following grounds;
 - 1) That the statements were obtained in circumstances that were unfair to the Accused.
 - 2) That the statements were obtained in circumstances that were oppressive.
 - 3) That the statements were obtained in breach of the Accused's right to counsel before his arrest before his caution interview and whilst in custody.

- 4) The Accused was assaulted by the Police Officer Sgt. Vijen of Samabula Police station as soon as the accused went to the Police station with the victim's family.
 - 5) The said Sgt. Vijen was very aggressive and stern in his voice and very threatening as well.
 - 6) The Accused was promised to be released by Sgt. Vijen and other police officers if he admitted to the alleged offence.
 - 7) The Accused after his release from remand went straight to Police Headquarters and complained to Inspector Sashi Kant about the assault by Sgt. Vijen.
 - 8) That Inspector Sashi Kant told the accused that it is one month now and all the injuries have faded and it would be no use making a complaint now. He then spoke to Sgt. Vijen by phone.
3. Prosecution led the evidence of five witnesses. The accused gave evidence.
 4. The first witness for the prosecution said that on the instructions received he re-arrested the accused who came to the police station. He did not threaten the accused during arrest. He admitted that his act of re-arresting the accused is not recorded in the Station Diary. His evidence did not reveal the time of arrest. According to his evidence it appears that the accused was not informed of the allegations during arrest.
 5. The second witness said that he was the interviewing officer and the accused's cautioned interview commenced on 27/09/11 at 1815 hours and concluded on 28/09/11 at 1220 hours. He said he did not assault, threaten and did not make any false promise to the accused before, during or after the interview. He said the accused was cooperative. During cross-examination when he was shown an entry in the relevant station diary which says that he searched and locked the accused in the cell at 8.20am on 27/09/11, he said he cannot remember locking the accused in the cell. He could not remember where the accused was kept before he commenced the interview until he was shown another station diary entry where it is stated that the accused was released at 1755 hours to be interviewed by him. He agreed with the said subsequent entry. Though he initially denied locking the accused in the cell, later when it was suggested to him that the accused was put in the cell without putting any allegation, he said "he was told the reason for him to be in the station". Then when he

was asked what reason did he tell the accused he replied “[t]hat he will be interviewed for the offence of abduction”.

6. The third witness was the witnessing officer. She said she witnessed the entire interview and accused was not threatened or induced to give the statement before, during or after the interview.
7. The fourth witness was the charging officer. The fifth witness said he is an investigator in the Police Head Quarters and he did not receive a complaint from the accused in 2011.
8. The accused said in his evidence that he went to the police station on 27/09/11 with the complainant’s parents because they told him that they have made a complaint to the police against him and the police are looking for him. He said the second prosecution witness assaulted him at the police station and thereafter the said officer pushed him into the cell and locked him up around 8.00am that day. He said he was not given food and water and was not allowed to use the washroom. He was also not allowed to contact his family members. His evidence was that he made admissions according to the complainant’s statement as he was told by the second prosecution witness because he was scared due to manner he was treated before the interview. He also said that he only came to know after the second prosecution witness told him that he made a mistake by keeping the complainant in his house.
9. Upon considering all the evidence led for the purpose of this *voire dire*, I have a doubt in my mind as to whether the second prosecution witness’ evidence that he cannot remember whether he locked the accused in the cell in the morning is true or not. I noted that he gave vague answers for certain crucial questions posed to him during cross-examination. It is pertinent to note that the station diary entry regarding him locking the accused in the cell at 8.20am on 27/09/11 which he disputed is in fact consistent with the version of the accused.
10. The evidence that was led suggests that the accused was locked up in the cell without him being informed of the allegations against him and even before the statement of the complainant was recorded.

11. All in all, I cannot rule out oppression and unfairness in this case. Therefore, the prosecution has failed to prove beyond reasonable doubt that the cautioned interview statement at VDPE1 was made voluntarily.

12. VDPE1 is inadmissible.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Jiten Reddy Lawyers, Nakasi.