

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 47 OF 2017

BETWEEN: **THE STATE**

AND: 1. **SHANIL KUMAR**
 2. **RAJENDRA MANI**

Counsel: **Ms A Vavadakua for the State**
 Ms N Karan for the 1st Accused
 Mr R Vananalagi for the 2nd Accused

Date of Hearing: **20 June 2018**

Date of Ruling: **26 July 2018**

RULING

- [1] The two accused are charged with rape. They seek to exclude their caution statements from evidence on the ground that the police extracted them using force. The caution statements are incriminating in nature and are contained in the respective Records of Interview of the accused.
- [2] The first accused (Mr Kumar) objects to the admissibility on the following grounds:
- (i) On 11 August 2017 he was arrested and was beaten at Labasa Police (sic) on 12 August 2017 whilst he was in police custody.

- (ii) The caution interview was taken whilst the accused person was in pain from the beating of the two police officers at Labasa Police Station. The names of the officers are Vikash and Kamal.
- (iii) That he was punched and kicked on his stomach, face and his fingers were pulled by two police officers named above at Labasa Police Station.
- (iv) The accused person was in lot of pain in police custody due to injuries he had suffered.
- (v) He was threatened by the police officers and he was scared for his life due to which admissions were made in caution interview.
- (vi) That he reported police assault to the learned Magistrate in Labasa Court on 14 August 2017.

[3] The second accused (Mr Mani) objects to the admissibility on the following grounds:

- (i) The 2nd Accused when arrested by the police was being threatened that he would be beaten if does not admit to the alleged offence.
- (ii) The 2nd Accused when being transported to the police station was punched three times on the stomach by a male police officer sitting on the front passenger seat who was part of the arresting team.
- (iii) The 2nd Accused was being threatened at the police station by Officer WDC 4877 Komal and the same male officer above during the caution interview to admit to the offence or will be beaten up.

[4] The basic rule for the admissibility of an admission or a confession is that it must be made voluntarily i.e. not obtained through violence, fear of prejudice, oppression, threats and promises, or other improper inducements. (*Ibrahim v R* [1914-15] All E.R. 874 at 877). A confession or an admission may also be excluded on the ground of unfairness (*Wong Kam-Ming v The Queen* [1980] A.C. 247, 261). The prosecution carries the burden to prove voluntariness or fairness beyond a reasonable doubt before a confession or an admission can be admitted into evidence.

[5] At the voir dire, the prosecution led evidence from five witnesses.

- [6] The first witness was the arresting officer, Cpl Alipate. It is not in dispute that the two accused were arrested from their respective homes at Namara in the morning of 11 August 2017. Both accused were advised of the reasons for their arrests. Both were brought to Labasa Police Station in the same police vehicle. The driver was PC Harinam. Both accused sat at the back passenger seat. Cpl Alipate sat in the front passenger seat. The journey from their homes to the police station took about 10 minutes. When they arrived at the station, Cpl Alipate handed the two suspects to the station orderly. He did not have any other role in the case. Cpl Alipate's evidence is that the two suspects cooperated during the arrest and that he did not threaten or assault Mr Mani as alleged by him.
- [7] The second witness was WPC Komal. She interviewed Mr Mani under caution at the station. Mr Mani elected to be interviewed in Hindi language. The interview was recorded in Hindi language and then translated into English language. The interview commenced on 11 August 2017 at 12.20 pm and was concluded the following day at 12.50 pm. Apart from the interview being suspended overnight on 11 August 2017 for the suspect to rest, the interview was suspended on intervals to give the suspect breaks. Meals were also provided during the breaks. WPC Komal in her evidence said that Mr Mani cooperated during the interview and made incriminating statements. She did not make any threats to Mr Mani during his interview.
- [8] The third witness was PC Kamal. PC Kamal drove Mr Mani for a reconstruction of scene at Namara Squatter Settlement on 12 August 2017 accompanied by WDC Sadamma. After reconstruction he returned to the police station and had no further role in the case. According to PC Kamal he did know the first accused (Mr Kumar) and that he was not present during the interview of the suspect. He denied pulling Mr Kumar's fingers backward or punching him in the stomach during the interview.
- [9] The fourth witness was WPC Sadamma. She was the investigating officer. She also interviewed the first accused (Mr Kumar) under caution. The suspect chose to give his statement in English language. The interview commenced on 11 August 2017 at 2.10 pm and was suspended overnight to allow the suspect to rest. The interview recommenced on 12 August 2017 at 10 am and was concluded at 3.35 pm. Meals and

breaks were given in between the interview. Both WPC Sadamma and the suspect signed the record of interview. According to WPC Sadamma no one else was present when she interviewed the suspect and that she did not threaten or assault the suspect or allowed any other police officer to assault the suspect during the interview as alleged by him. After the interview was concluded, the suspect was charged and produced in court. She did not have any further role in the case after the suspect was produced in court.

- [10] The fifth witness was PC Naiker. PC Naiker was part of the police escorting team that went for the reconstruction of scene on 12 August 2017. He was not present during any interview of the suspect. According to PC Naiker he did not assault the first accused (Mr Kumar) during his caution interview or the second accused (Mr Mani) during the scene visit as alleged by them.
- [11] Both accused elected to give evidence. In addition, the first accused's mother gave evidence for the defence.
- [12] Mr Kumar's evidence is that he was assaulted by PC Kamal and PC Naiker during his interview at around 11.30 am on 12 August 2017. Mr Kumar said that he did not give his police statement out of his own free will. He said that the two police officers twisted his fingers by pulling them backwards and also punched him in the stomach several times. He said that his fingers were swollen and that he had stomach pains for two weeks. Later on the same day when his mother came to visit him at the station, he complained to his mother. When he was produced in the Magistrates' Court, he complained to the Magistrate.
- [13] Mr Kumar's mother, Roshni Devi said that when she visited her son at the station a day after his arrest, she saw his hands were swollen and that he complained to her that the police had assaulted him.
- [14] Mr Mani's evidence is that when he was arrested on 11 August 2017, the police did not do anything to him. During his interview, WPC Komal threatened him that if he did not confess they will assault him. While he was on his way for the scene visit on

12 August 2017, officer Vikash (referring to PC Naiker) threatened and punched him in the stomach while they were inside the police vehicle.

- [15] Clearly, there are two different versions. Both accused in their evidence have said that they were threatened and assaulted by the police officers. The police officers deny the allegations of threats and assault.
- [16] Mr Kumar's evidence is that he was assaulted at around 11 am on 12 August 2017. According to his record of interview, the interview commenced on 11 August 2017 and by the time the interview was suspended at 4.30pm, Mr Kumar made an admission that he had sexual intercourse with the complainant but he thought she was 18 years old due to her built. The following day the interview commenced at 10 am and was suspended at 10.50 am for the scene visit. If Mr Kumar's evidence is true then he was assaulted after he had made the admissions. In other words, the admissions were not extracted using fear or violence. Further, it makes no sense for the police to assault him when he had already made admissions and also offered an explanation for his conduct. I do not believe the evidence of Mr Kumar and his mother.
- [17] Mr Mani's first two grounds cannot be sustained on his own evidence. He said that he was not assaulted by the arresting team. He was threatened during the interview at the station and assaulted inside the police vehicle when he was taken for the scene visit the following day. However, I note that by the time Mr Mani was taken for the scene visit he had already made admissions in his record of interview. It makes no sense for the police to assault him when he had already made the admissions and was cooperating with the police.
- [18] On the question of whether the two accused persons were assaulted as alleged by them, I believe the evidence of the police officers that they did not threaten, assault or act unfairly to extract admissions out of the suspects. I am satisfied beyond a reasonable doubt that both accused gave their police statements freely and voluntarily and without threats, force and unfairness.

[19] The caution statements of both accused are admissible.



A handwritten signature in blue ink, appearing to be "D. Goundar", written over a dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for State

Pacifica Barrister & Solicitor for 1st Accused

R Vananalagi & Associates for 2nd Accused