

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 60 of 2016

STATE

V

ARTIKA ANJANI

Counsels: Mrs. D. Kumar for the State
Mr. A. Kohli for the Accused

Date of Hearing: 06 August 2018

Date of Ruling: 06 August 2018

RULING
(VOIRE DIRE)

1. The State seeks to adduce into evidence a record of interview conducted with the accused on the 17th and 18th November 2016 at the Labasa Police, Fraud office.
2. The accused objects to the State's proposed use of same on the grounds that her right to counsel at the time was breached and also that improprieties on the part of Officer Nilesh vitiated the voluntariness of her participation.

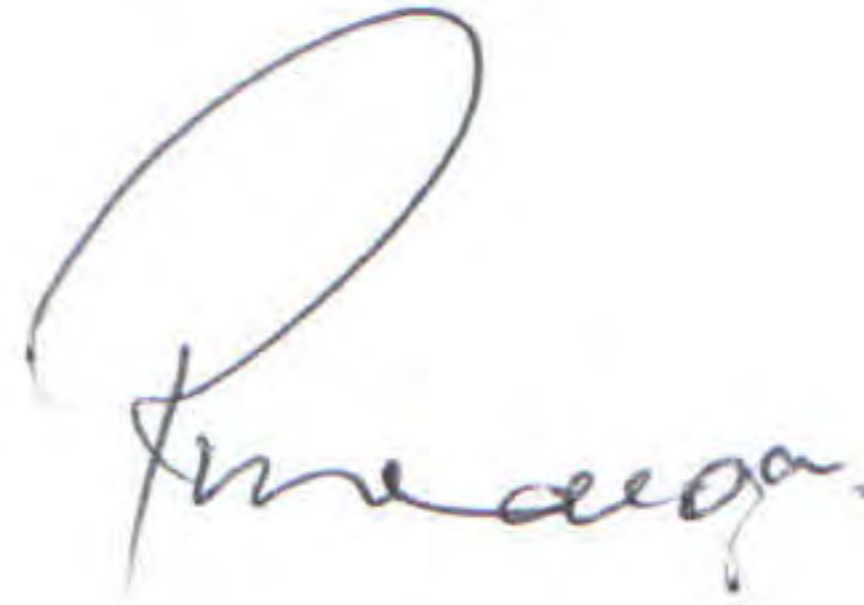
3. I am mindful of the test to be applied to my findings in such an enquiry; that is that the answers purportedly provided by the accused to the questions posed to her in the interview were provided in the absence of any words or acts by the officers concerned to instill fear in her or to oppress her. In addition it must be clear that she was afforded all her Constitutional rights and that the interview was conducted fairly.
4. In the instant case I must be sure that she was given the right to legal counsel before the interview and that Sergeant Nilesh did not behave improperly. Were it to be found that Nilesh did in fact threaten her or raise his hand to her as alleged, then I would find that the interview was not conducted with a voluntary subject.
5. The State called four Police witnesses in this trial within a trial.
6. Inspector Satish Chand was the officer recording the questions and answers by way of computer input, which he then printed out for signature by the three participants. Also present was Sgt. Nilesh who is a Police technical expert: His presence was to open and discuss with the accused emails and other on line transactions which she claimed were the catalyst for her remittances of Post Office money to another in Sigatoka.
7. Insp. Satish explained to the Court that when offered the right to Counsel the accused wanted to speak to legal aid counsel and she arranged to get a legal aid counsel on his telephone to speak to the accused. He denied that the accused had then asked for Mr. Kohli. She did, at a later stage ask that he come and he did in fact do so.

8. Sgt Nilesh denied that anything improper occurred and he certainly did not threaten the accused or raise his hand to her.
9. The female witness to the interview and an independent senior community leader also gave evidence in the enquiry.
10. All of these witnesses gave consistent and convincing evidence of the propriety of conduct during the interview and of the willing co-operation of the accused in answering their questions and I believed them.
11. The accused gave evidence in the voire dire. She told of conversations she had with the Police before the interview in which they arranged a date for the interview and they asked her to send them the underlying emails about the on line loan which she did.
12. She attended the interview. She was asked if she wanted a lawyer and she said yes, she wanted to see Mr. Kohli. Satish told her that Mr. Kohli was busy and then he contacted the Legal Aid Commission. She spoke to one Legal Aid lady lawyer who told her that she couldn't help her. The lawyer said she could be there in two hours but Satish said he couldn't wait that long.
13. Satish was nice and the accused says she co-operated with him. He asked her about the Post Office money and she admitted to that.
14. Sgt Nilesh was present all the time but she didn't know he was a Policeman. Other officers were coming and going. Nilesh suddenly came in front of her and said; "I am from Suva. I am stricter than these Labasa officers and I will lock you up." He

leaned forward and raised his hand to her. She said she didn't do it. He threatened to call her family but the accused begged him not to call her mother-in-law because that would cause a lot of trouble. He then asked her about the fire again. She just nodded. On seeing her nod, Nilesh said "OK I won't call them then."

15. Her husband and father-in-law were called and they came to the Office. When her father-in-law asked her if she did it, she just nodded her head. Nilesh had told her that if they asked she was just to nod her head. She was in such a state she was crying and just nodded her head.
16. She spoke to Mr. Kohli on the phone and he came to the Station with her uncle. He spoke to the officers about bail and nothing else.
17. In the statement she says that she used the money. That part is true and voluntary but she didn't admit setting the fire. She had nodded under pressure.
18. The independent senior citizen came to speak to her. He had a piece of paper with him and was asking questions from that paper. She told him about the money but he didn't ask anything about the fire.
19. I kept in mind the burden on the state and I carefully analyzed the evidence of the accused. Unfortunately however I didn't believe some of her evidence and nothing she told the Court made me doubt the evidence of the officers. I don't believe she was threatened nor denied her rights to counsel.

20. I find that the record reflects the complete voluntariness of the interview which was conducted in all fairness and without oppression.
21. It can be adduced in evidence.



P. K. Madigan
Judge

At Labasa
06 August 2018

