

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

CRIMINAL CASE NO.: HAC 55 OF 2015

STATE

v

SHIU PRASAD

Counsel: Mr Seruvatu for the State
Ms. S. Khan for Accused

Dates of Hearing : 12th & 13th February, 2019

Date of Ruling : 13th February, 2019

RULING ON VOIR DIRE

1. The Prosecution seeks to adduce into evidence the cautioned interview and the charge statement of the accused recorded by police at the Namaka Police Station.
2. The accused challenges the admissibility of these documents on the basis that they were recorded in breach of his constitutional and common law rights. He also says that the whole interview process was oppressive and unfair.
3. The Defence objects to the admissibility of the caution interview of the accused on the following grounds:-
 - a) The accused was not informed promptly, in a language that he or she understands, of-

- i) The reason for the arrest or detention and the nature of any charge that may be brought against that person;
 - ii) The right to remain silent; and
 - iii) The consequences of not remaining silent;
 - b) To remain silent;
 - c) To communicate with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission.
 - d) Not to be compelled to make any confession or admission that could be used in evidence against that person;
 - e) To communicate with, and be visited by –
 - i) His or her spouse, partner or next of kin; and
 - ii) A social worker or religious counsellor.
 - a) The Accused was denied his right to consult a Solicitor when arrested and after arrest;
 - b) That the statements were obtained in circumstances that were unfair to the Accused;
 - c) The Accused was systematically softened during the interview in that he was kept in custody in circumstances which was degrading and inhumane;
 - d) That the statements were obtained in circumstances that were oppressive;
 - e) That the statements were obtained in breach of Rule 2, 4 and 7 of the Judge's Rules; and
 - f) That the statements were obtained in breach of Section 13 of the Constitution.
4. 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.
5. 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.

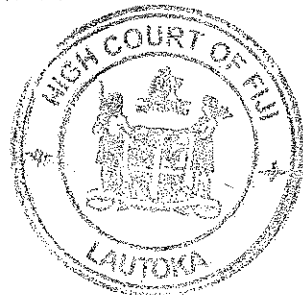
6. The burden of proving voluntariness, fairness, lack of oppression, compliance with constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
7. At the hearing, the State called the investigating officer, interviewing officer and the charging officer
8. Investigating officer, DC Ravouyon conducted the initial investigation into the rape allegation and he arrested the suspect on the same day the alleged incident happened (30th of March, 2015).
9. DC Ravouyon said that he was present when DC Satendra conducted the interview and also when WPC Sangeeta charged the suspect. The interview and the charge were conducted in Hindi language, the language that was best understood by the suspect. Considering the age of the suspect, he was treated fairly, and handled with care. The witness said that he explained the reason for the arrest in Hindi. He is sure that the suspect understood the charge at the interview very well because he was denying the allegation.
10. The interviewing officer Sgt. Satendra Kumar testified that, on 30th of March, 2015, he interviewed the suspect, Shiu Prasad at Namaka Crime Office. The suspect was treated well and his rights were afforded. He preferred to be interviewed in Hindi and therefore, the interview was conducted in the Hindi language in the presence of witnessing officer Constable Rajeev. The original Hindi record of interview was translated in to English. The interview started on 30th of March, 2015 at 0830 hrs. and concluded on the following day at 11 hrs. The suspect was given sufficient breaks during the interview.
11. The allegation against the suspect was explained in Hindi. The suspect was cautioned in Hindi. The suspect understood the allegation and the cautionary words put to him. His rights under the Constitution including right to counsel were explained, which he understood.
12. The suspect was not assaulted, threatened or oppressed in any way to admit to the allegation. He was given an opportunity to visit a doctor. When the interview recommenced after breaks, and during reconstruction, the suspect was cautioned again. The Record of Interview was read back to the accused in Hindi. He did not wish to add or alter anything in the interview.
13. The Charging Officer WPC Sangeeta charged the suspect Shiu Prasad on the 31st of March, 2015, in Hindi Language, the language he preferred. Before or during the charge, the suspect did not complain of anything. He was cautioned in Hindi and he understood the allegation and the caution put to him. The constitutional rights including the right to counsel were given to


the suspect. He understood the charge and put his thumb impression acknowledging that he was given his rights.

14. The evidence of the police officers is consistent and credible. The lengthy cross examination could not discredit the evidence of the Prosecution's witnesses. The evidence that the accused understood the charge, the cautionary words, the contents of the interview and the charge statement, when they were read back to the accused, is acceptable and believable.
15. The accused had preferred Hindi language to be interviewed and charged. He had acknowledged that he preferred Hindi. Police officers had not received any complaint from the accused that he did not understand the rights given to him.
16. There is no evidence that the accused was ill-treated or oppressed. I am satisfied that the accused was treated well and he understood the caution put to him, and his constitutional rights. He has acknowledged that he understood the contents of the record of interview and the charge statement.

Conclusion

17. Prosecution proved beyond reasonable doubt that the accused's confessions were obtained voluntarily and fairly. I hold the caution interview statement and the charge statement to be admissible in evidence.




Arun Alutige
Judge

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13th February, 2019

Solicitors: Office of the Director of Public Prosecution for the State
Iqbal Khan and Associates for the Defence