

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case. No. HAC 21 of 2017**

**BETWEEN** : **THE STATE**

**A N D** : **SOLOMONI TIKO**

**Counsel** : Mr. T. Tuenuku for the State.  
Ms. A. Bilivalu for the Accused.

**Dates of Hearing** : 04 and 05 June, 2020

**Dates of Submissions** : 08 June, 2020

**Date of Ruling** : 08 June, 2020

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**VOIR DIRE RULING**

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1. The accused is charged with four counts of rape under the Crimes Act out of which the first three counts are representative counts.
2. The prosecution wishes to adduce in evidence at trial the caution interview and the charge statement of the accused.

3. The accused objects to the admissibility of both the above mentioned documents upon the following grounds:

(a) Caution Interview

- (i) When the accused continued to deny the allegations Acting Detective Sergeant Ilario Belo threatened him by uttering the words “*you admit this case otherwise you will be locked in the cell.*” As this was the accused first time at the police station the accused was frightened that if he did not admit the allegations the police had the right to lock him up so he just signed his caution interview;
- (ii) There was a breach of his rights under rules 2 and 4 of the judges rules and articles 9 (2), 10 (1) and 14 (3) (g) of the International Covenant on Civil and Political Rights;
- (iii) There has been a breach of his constitutional rights under sections 13 (d) and 14 (2) (k) of the Constitution of the Republic of Fiji 2013.

(b) Charge Statement

- (i) The accused was not allowed to contact a lawyer from the Legal Aid Commission even though he had requested the charging officer;
- (ii) The charging officer did not read out the contents of the charge statement in Q. 18 and its answer;
- (iii) Police Officer Belo threatened the accused if he does not sign he will be locked up in the cell;
- (iv) The charging officer had pointed where to sign without telling the reasons why the accused should sign.

4. The prosecution denies all the allegations raised in the voir dire grounds. The burden is on the prosecution to prove beyond reasonable doubt that the caution interview and the charging of the

accused was conducted fairly under just circumstances, the answers were given voluntarily, lack of prejudice, lack of oppression and in compliance with the Fijian Constitution where applicable. In this ruling the above principle of law has been kept in mind throughout.

### **LAW**

5. The Court of Appeal in *Ganga Ram and Shiu Charan vs. R, Criminal Appeal No. AAU 46 of 1983* outlined the following two tier test for the exclusion of confessions at page 8 in the following words:

*“First, it must be established affirmatively by the Crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats or prejudice or inducement by offer of some advantage which has been picturesquely described as “the flattery of hope or the tranny of fear” Ibrahim v R (1914) AC, 599; DPP v Ping Lin (1976) AC 574.*

*Secondly, even if such voluntariness is established there is also a need to consider whether the more general ground of unfairness exists in the way in which police behaved, perhaps by breach of the Judge’s Rules falling short of overbearing the will, by trickery or by unfair treatment. R v Sang (1980) AC 402; 436 at C-E. This is a matter of overriding discretion and one cannot specifically categorise the matters which might be taken into account.”*

6. The Constitution of the Republic of Fiji at sections 13 and 14 have recognised and endorsed the above mentioned principles as well.
7. It is for this court to decide firstly, whether the caution interview and the charge statement of the accused was conducted freely and fairly without any threats, assault, inducements or any improper practices by the persons in authority namely the Police Officers who were

involved in the interrogation and that the accused had voluntarily given his answers on his own freewill.

8. Secondly, if there has been oppression or unfairness then this court can in its discretion exclude the interview and the charge statement. Further if the accused common law rights have been breached then that will lead to the exclusion of the confession obtained, unless the prosecution can show that the accused was not prejudiced as a result of that breach.

### **PROSECUTION CASE**

9. The prosecution called four witnesses to prove beyond reasonable doubt that the confessions obtained by the police during investigation was given by the accused voluntarily without any duress, force, pressure, threat, assault, torture, inducement or any breaches of the accused's constitutional or commons law rights.
10. The first prosecution witness WDC 3864 Sainimere Pauline informed the court that in the year 2017 she was based at the Ba Police Station.
11. The witness knows the accused personally since she is related to him by marriage. In this case she was the Investigating as well as the Interviewing Officer, on 10 January, 2017 the caution interview of the accused was conducted at the Crime Office of the Ba Police Station in the ITaukei language by using the laptop. The original caution interview of the accused was marked and tendered as prosecution exhibit no. 1.
12. The witness signed all the pages of the caution interview her signature was the last one in the sequence, the first signature belonged to the accused and the second signature belonged to the witnessing officer

D/Insp. Ilario Belo who was present during the interview and had signed all the pages of the caution interview.

13. The witness did not force the accused to sign the caution interview, he was asked to sign and he had agreed to do so. The accused was treated in a friendly manner he was given all his rights but he did not wish to exercise the same.
14. The accused was also given sufficient breaks during the caution interview he did not complain about the conduct of the police officers. The English version of the caution interview was translated by DC John since she was transferred to Tavua Police Station.
15. In cross examination the witness maintained the witnessing officer D/Insp. Belo was present throughout the caution interview and had signed the interview at the time it was recorded. The witnessing officer had also signed all the pages of the interview.
16. The witness denied D/Insp. Belo had interfered with the interview process by forcing the accused to admit the allegations and threatening him if he did not admit, he will be locked in the cell.
17. The witness denied the accused was scared during the interview and that when D/Insp. Belo was threatening the accused she had sat quietly and watched without stopping the officer.
18. The second witness Det. Inspector Ilario Belo informed the court that he was the witnessing officer during the accused caution interview. The accused was responding well to the interviewing officer, his role was to see that the accused was given his rights and was not abused by anyone. The witness did not communicate with accused he was sitting there to observe the caution interview.

19. The witness stated that he had signed the caution interview and the middle signature was his on all the pages and that he did not abuse the accused at any time, neither had he forced the accused to sign on all the pages of the interview. The witness was not present when the accused was formally charged.
20. In cross examination the witness stated that he signed the caution interview after the interview had finished and he signed after the accused and the interviewing officer. The witness also stated that the accused was explained that he can sign the interview if he wishes to do so.
21. The witness denied forcing or threatening the accused to admit the allegations otherwise he will be locked in the cell either during the interview or the charging stage.
22. The third witness DC 5121 Jone Lanyon informed the court that he had translated the caution interview of the accused from the Itaukei language to the English language. The witness did not translate question and answer 37 from the Itaukei language to the English language as follows:

*Q. 37: What time she does it to you?*

*Ans: The times she came back from school to change.*
23. The English translation of the accused caution interview was marked and tendered as prosecution exhibit no. 2.
24. The final witness was DC 4384 Timoci who had charged the accused at the Crime Office of Ba Police Station. The witnessing officer was DC Sikeli the charging was done in the Itaukei language at the request of the accused.

25. The accused had signed the charge statement, the witness signed in the middle with the witnessing officer's signature being the third one. The accused had signed the charge statement on his own freewill, no one forced or pressured the accused to make those admissions mentioned in the charge statement. The charge statement of the accused in the Itaukei language dated 11 January, 2017 was marked and tendered as prosecution exhibit no. 3.
26. The witness had also done the translation in the English language which was marked and tendered as prosecution exhibit no. 4. The accused was okay during the charging and the witness did not observe any threats or intimidation on the accused by any police officers.
27. In cross examination the witness stated that he had given the accused his right to contact a lawyer at Q. 13 in the Itaukei language. The translated version of Q. 13 is noted as follows:
- Q: "Would you like to contact any of the lawyer or the legal aid?"*
- Ans: I will see legal aid.*
28. When it was suggested that as per the original charge statement the accused had answered that he wanted to see a legal aid lawyer the witness agreed. The witness also agreed that he did not afford the accused the opportunity to see a legal aid lawyer. D/ Insp. Belo was not present before, during and after the charging.
29. This was the prosecution case.

### **DEFENCE CASE**

30. At the close of the prosecution case the accused opted to give evidence under oath.

31. The accused informed the court that on 10 January, 2017 he was arrested and taken to Ba Police Station he was interviewed by Sainimere. According to the accused he had denied all the allegations other than Sainimere there were two other male police officers present.
32. When the accused denied, D/Insp. Belo came behind him and said *“if you don’t tell the truth we will lock you up in the cell.”* He was also told that they will not hear his side of the story but they will hear the girl’s side of the story only. The accused did not say anything and agreed to sign because he did not want to go into the cell.
33. The accused stated that the reason why he admitted to the allegations was because he was forced to admit and he couldn’t do anything. In respect of the caution interview the accused was told by Sainimere to sign which he did. D/Insp. Belo had only come from behind during the caution interview and not during charging. The interview was read to him by Sainimere.
34. During charging the accused had wanted to see a legal aid lawyer and this was the first time he had been arrested by the police.
35. In cross examination the accused confirmed D/Insp. Belo was not present during his charging. The police officers had not assaulted him at any time, Sainimere is related to him who was asking questions and he was answering. When it was suggested that D/Insp. Belo had treated him properly the accused said this officer had spoken to him angrily. He did not complain about D/Insp. Belo to anyone including Sainimere or other police officers or when he was produced in court.
36. The accused agreed that he had signed on all the pages of both the documents and that none of the police officers had taken his hand to



sign. He signed because he was told to sign, both the documents were read to him and he understood the questions and answers.

37. In re-examination the accused clarified that D/Insp. Belo had spoken angrily to him meant he was told to admit to what had been told to him if not they will lock him in the cell. This happened in front of Sainimere and two other police officers. The accused signed the documents because he was scared by what D/Insp. Belo had said.

38. This was the defence case.

### **DETERMINATION**

39. The prosecution wishes to rely on the confessions obtained by the police during the caution interview and charging, however, the accused is objecting on the grounds that the admissions were obtained by the impropriety of the witnessing police officer during the caution interview and also due to the breach of his constitutional right to communicate with a lawyer guaranteed under the Constitution.

40. The objections raised by the accused are directed to the caution interview and the charge statement of the accused. The law is very clear that the prosecution bears the burden to prove beyond reasonable doubt that the confessions were given by the accused voluntarily on his own freewill in fair and just circumstances without any breaches of his Constitutional Rights.

41. There is no dispute that the accused was caution interviewed by WDC Sainimere on 10<sup>th</sup> January, 2017 and D/Insp. Belo was the witnessing officer. The accused was charged the next day. The accused was produced at the Magistrate's Court, Lautoka on 12<sup>th</sup> January, 2017.

42. All the Police Officers have denied any wrong doing those involved in the interrogation have come to court saying that the accused was treated well, given all the facilities that can be reasonably provided and that the accused had made no complaints.
43. After the hearing, both counsel filed their written submissions for which this court is grateful.
44. The accused is objecting to the admissibility of his caution interview and the charge statement primarily on two grounds. In respect of his caution interview the accused objection is that he was threatened by D/Insp. Belo to admit the allegations otherwise he will be locked in the cell. The accused got frightened since it was his first time to be at the Police Station so he admitted to all the allegations and signed the documents.
45. In respect of his charge statement the accused says he was not allowed to contact a lawyer from the Legal Aid Commission even though he had requested the charging officer that he wanted to contact a legal aid lawyer before his charging.
46. For completeness, I will first address the objection raised in respect of the caution interview and then the charge statement.

#### **CAUTION INTERVIEW**

47. The interviewing officer Sainimere informed the court that she was asking the questions and the accused was answering which was recorded on the laptop. The witnessing officer was D/Insp. Belo who was present throughout the interview who had signed the caution interview and his signature was the middle one.

48. At no time had Police Officer Belo forced or threatened the accused to admit the allegations the atmosphere was friendly she is related to the accused so this was also a reason why she was friendly to the accused. The accused was normal and he signed when asked to sign the interview.
49. When the interviewing officer Sainimere was in the midst of her evidence in chief the defence counsel had brought to the attention of the court the fact that the caution interview which was disclosed to the defence and the court did not show the signature of the witnessing officer. When the prosecution witness Sainimere was asked if Police Officer Belo had signed the caution interview in her presence this witness stated this officer had signed the caution interview. This proposition was also supported by D/Insp. Belo who confirmed his signature and that he had signed the caution interview.
50. However, when I consider the disclosures filed in court and after perusing the caution interview disclosed I am concerned to note that the signature of the witnessing officer D/Insp. Belo is not in the caution interview disclosed.
51. The prosecution witnesses have not been able to explain how such an omission has come about. The state counsel tried to justify the omission by stating that it was an administrative oversight.
52. I do not accept this reason as justified in the circumstances of this case. It is obvious to me that at the time the caution interview was photocopied from the original it was not signed by D/Insp. Belo. The disclosure is the authentic photocopy of the original caution interview which was disclosed weeks before the voir dire hearing.
53. The office of the Director of Public Prosecutions photocopies the disclosures from the originals yet when the caution interview was

exhibited and evidence adduced the signature of the witnessing officer was in the original. The interviewing officer confirmed the witnessing officer had signed the interview in her presence.

54. Considering the above, this court cannot resist from coming to the inescapable conclusion that WDC Sainimere and D/Insp. Belo had not told the truth in court about the signature of the witnessing officer at the time of the interview. Both the witnesses were obviously trying to hide the fact that D/Insp. Belo had not signed the caution interview at all. The caution interview disclosed does not have the signatures of the witnessing officer yet when the exhibit was tendered in court it miraculously contained the signature of the witnessing officer.
55. Bearing in mind the above, this court does not accept the evidence of WDC Sainimere and D/Insp. Belo that they told the truth when they said the accused was not threatened to admit the allegations. No weight can be given to the evidence of these witnesses in this regard.

#### **CHARGE STATEMENT**

56. The complaint raised in respect of the charge statement is that the accused had wanted to see a legal aid lawyer but was not allowed to do so by the charging officer DC Timoci.
57. Section 13 (1) of the Constitution of Fiji allows every person who is arrested or detained the right to communicate with a legal practitioner of choice or under the legal aid scheme. In this case the accused had asked the charging officer that he wanted to contact a legal aid lawyer before he was charged but this did not happen since the charging officer Timoci did not allow this.

58. DC Timoci admitted in court that the accused had asked to contact a legal aid lawyer but he did not allow this.
59. In *R v Mallinson (1993) 1 NZLR 528* the New Zealand Court of Appeal held that the onus was on the prosecution to show firstly that the suspect had been told of his right to consult a lawyer and secondly the suspect understood the substance of the right and that the exercise of the right would have been implemented if he chose to exercise it.
60. The charging officer had breached the right of the accused to communicate with a legal aid lawyer which had resulted in the admissions made by the accused.
61. On the other hand the accused a senior citizen and an unsophisticated villager with class 8 education told the truth when he said that this was the first time he had been arrested and brought to the police station.
62. The accused was able to explain what he had gone through at the police station which I accept without any reservation or doubt. I also accept that D/Insp. Belo had threatened the accused to admit to the allegations and out of fear he had signed the caution interview and the charge statement as pointed out by the police officers.
63. The accused was also not allowed see or consult a legal aid lawyer which he had opted during his charging also shows a disregard by the charging police officer. As a result the accused was prejudiced to the extent that he made admissions in his charge statement.

## **CONCLUSION**

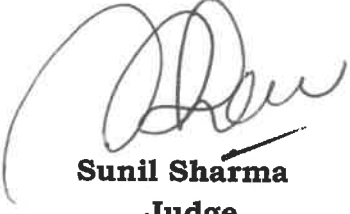
64. Considering the totality of the evidence it is quite obvious that there have been impropriety and constitutional breach by police officers

during interrogation. The prosecution has also not been able to show that the breach of the accused constitutional right to communicate to a lawyer did not cause any prejudice to him.

65. The fact that the accused did not make any complaints to the police officers or to the Resident Magistrate in his first appearance in court does not hold any weight. The conduct of the police in this case had sapped the freewill of the accused.
66. This court is satisfied that the accused was forced and/or threatened to admit to the allegations in the caution interview which he did.
67. In regards to the charge statement the charging officer deliberately did not give the accused an opportunity to contact a legal aid lawyer before charging. The accused freewill was also overborne by the threats made by D/Insp. Belo during the caution interview which had an effect upon the accused during his charging.
68. In view of the above, this court rules that the admissions contained in the caution interview dated 10 January, 2017 and charge statement dated 11 January, 2017 was obtained by force and threat and in breach of his constitutional right to communicate with a lawyer.
69. The accused did not admit to the allegations voluntarily on his freewill, I prefer the evidence of the accused over that of the prosecution witnesses. This court is not satisfied beyond reasonable doubt that the accused had made the admissions in his caution interview and charge statement voluntarily.

70. In view of the above, I rule that the caution interview and the charge statement of the accused is not admissible in evidence.



  
**Sunil Sharma**  
**Judge**

**At Lautoka**  
08 June, 2020

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**