

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case. No. HAC 128 of 2017

BETWEEN : **THE STATE**

A N D : **VIMLESH GOUNDAR**

Counsel : Mr. A. Singh for the State.
Ms. V. Nettle, Mr. S. Heritage with Mr. T.
Kaloulasulasu for the Accused.

Dates of Hearing : 02, 03 and 06 July, 2020

Date of Submissions : 07 July, 2020

Date of Ruling : 08 July, 2020

VOIR DIRE RULING

1. The accused is charged with one count of attempted murder contrary to section 44 (1) and section 237 of the Crimes Act.
2. The prosecution wishes to adduce in evidence at trial the caution interview of the accused dated 11th and 12th June, 2017.

3. The accused objects to the admissibility of the caution interview upon the following grounds:

a) *The Accused was not informed promptly, in a language that he or she understands of:*

i) *The reason of 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 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.*

c) *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.*

d) *The Accused was denied his right to consult a Solicitor when arrested and after arrest.*

e) *That the statements were obtained in circumstances that were unfair to the Accused;*

PARTICULARS

i) *During the time of interviewing, the Accused person was assaulted by the Investigating Officer at Natadola Police Post and thereafter at Sigatoka CID office.*

- ii) *The Accused person was provoked by the investigating officers during the reconstruction of caution interview and was forced to admit to the particulars of the alleged offence especially to the evidences and the circumstances surrounding the alleged offence.*

- f) *The Accused was systematically softened during the interview that he was kept in custody in circumstances which was degrading and inhumane;*

PARTICULARS

- i) *That the condition of the cell where the accused person was kept was unfit for human habitation. The cell has flees, mosquitoes, bed bugs, vomit and urine smell. There was no bedding and he was made to sleep on the cold floor.*

- g) *That the statements were obtained in circumstances that were oppressive;*

PARTICULARS

- i) *The length of time he was kept in custody;*
- ii) *Period of questioning was far too long;*
- iii) *The length of time intervening between the periods of questioning was not justified;*
- iv) *The accused person was never given proper refreshment.*
- v) *That the statements were obtained in breach of Rule 2, 4 and 7 of the Judge's Rules.*
- vi) *That all the Caution Interviews obtained is in breach of Section 23 (1) (e), 25 (1) and 27 (1) (a), (c) and (f) of the Constitution of the Republic of Fiji.*

4. In the grounds of voir dire filed counsel mentioned that the caution interview was obtained in breach of sections 23 (1) (e), 25 (1) and 27 (1) (a), (c) and (f) of the Constitution of the Republic of Fiji when none of these sections applied to the facts of this case. As a matter of prudence it is important for counsel to exercise care when drafting documents and filing in court.
5. The burden is on the prosecution to prove beyond reasonable doubt that the caution interview 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 principles of law has been kept in mind throughout.

LAW

6. 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.”

7. The Constitution of the Republic of Fiji at sections 13 and 14 have recognised and endorsed the above mentioned principles as well.
8. It is for this court to decide firstly, whether the caution interview 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 arrest, caution interview and reconstruction of the crime scene and that the accused had voluntarily given his answers on his freewill.
9. Secondly, if there has been oppression or unfairness then this court can in its discretion exclude the interview. Further if the accused common law rights have been breached then that will lead to the exclusion of the confessions obtained, unless the prosecution can show that the accused was not prejudiced as a result of that breach.

PROSECUTION CASE

10. The prosecution called four witnesses during the voir dire hearing. The first witness D/Sgt. 3152 Tobia Matai informed the court that in 2017 he was based at the Sigatoka Police Station as a Crime Intelligence Officer. On 11th June, 2017 the witness was instructed to go to Lautoka Hospital to see the victim of a stabbing case.
11. The witness with three other police officers left Sigatoka Police Station at around 9am he was the driver, on the way the witness received a call from the Crime Officer that the suspect of the stabbing case was also in Lautoka so the witness was asked to check on the suspect Vimlesh Goundar.
12. After visiting the victim at the Lautoka Hospital the witness and his team made inquiries about the whereabouts of the suspect. The information received was that the suspect was staying with his uncle at Jinnu Road.

13. At Jinnu road the accused was arrested, the witness had touched the suspect and told him that he was under arrest, the witness also told the accused the reason why the police officers were there and the reasons for his arrest. He told the accused that he had a right to remain silent, and the right to consult his lawyer. The accused did not say anything and was okay.
14. In the police vehicle the accused was seated at the back seat in between Constable Mesake and Adriu. After leaving Lautoka they did not stop anywhere and arrived at the Sigatoka Police Station. From the time of the arrest till arrival at the Sigatoka Police Station no one assaulted, threatened or pressured the accused. The accused also did not complain about anything as well.
15. At the Sigatoka Police Station the accused was handed over to the Crime Officer Insp. Baro. Furthermore, the witness was also the witnessing officer of the accused's caution interview which was conducted on the same afternoon.
16. As a witnessing officer it was his responsibility to see that the procedure of the interview was followed by the interviewing officer and also that there was no threat or assault on the accused during the interview.
17. The witness was present throughout the interview before, during and after the interview the accused was not assaulted, threatened or pressured by the witness or any other police officers including the interviewing officer. The witness had signed the caution interview the accused was given all his rights, he was given sufficient breaks as well, the accused was fine, he did not make any complaints to the witness about anything.

18. The interviewing officer was DC Baseisei, the accused signed the caution interview which was conducted in the English language by the use of a computer from 16.39 hours. The accused was given breaks during the interview as follows:
 - a) First break was at 17.12 hours for the accused to visit the toilet for 6 minutes; and
 - b) Second break was at 18.28 hours to have his dinner;
 - c) Third break was at 19.34 hours for the accused to have his rest at the end of day one.
19. After the interview the accused was escorted to the charge room and then to the cell block the witness did not go into the cell block.
20. On the 12th the witness met the accused who was fine and he did not complain about anything. On this day the witness with the interviewing officer and two other police officers namely Constables Adriu and Sairusi and the accused went to the crime scene in Cuvu and Olosara in the police vehicle. No one assaulted, threatened or had put pressure on the accused at any time while travelling to and from or at the reconstruction of the crime scene.
21. When the interview recommenced after reconstruction the accused was given all his rights, the accused signed the caution interview, the witness and the interviewing officer also signed. The accused was not assaulted or threatened he also did not make any complaints about anything to date.
22. In cross examination the witness stated that the accused was given his right to remain silent, right to contact any solicitor before he was taken to Sigatoka. When the witness was referred to his police statement he stated that he has mentioned that he had cautioned the accused but did not give any details of what rights were included.

According to the witness he had given the accused all his rights which were communicated to the accused orally.

23. The witness further stated that he could have recorded the rights given in detail but by writing the word caution in his police statement he meant all the rights were given to the accused. When further questioned the witness said that there is no standard procedure in writing police statements detailing everything he further stated that it was his statement and he wrote it as such. The witness maintained that during the time of arrest he had given the accused all his rights and the caution which the accused understood.
24. The witness stated that he had informed the accused about the consequences of not remaining silent. They did not stop anywhere after the accused was arrested. The witness denied stopping at Vatudradra Police Post he stated that the accused was not assaulted or threatened while going to Sigatoka.
25. The witness agreed that on day one the interview was for about 3 hours in total with two breaks in between. The breaks were given at the request of the accused and he had not asked for any other breaks. The first break was for about 6 minutes and the second one was for about 10 minutes.
26. The interviewing officer was present throughout the interview with the witness. The witness denied the suggestion that during the interview the witness and other police officers had assaulted the accused.
27. The second witness was DC 3176 Misidomo Baseisei who was the interviewing officer, he informed the court that on 11th June, 2017 he was instructed to interview the accused. The witnessing officer was Cpl. Matai Tobia.

28. The interview was conducted at the crime office of the Sigatoka Police Station. Before the interview the witness had met the accused who was normal and he did not complain of anything. The interview was conducted by use of a computer in question and answer format in the English language as requested by the accused. The witness did not assault, threaten or put pressure on the accused before or during the interview.
29. The accused was explained his rights, provided with sufficient breaks, and meals. The accused signed the caution interview no one forced him. The caution interview of the accused was marked and tendered as prosecution exhibit no.1. According to the witness the accused had been given his rights, he was properly cautioned and also given sufficient breaks. After the interview the accused was taken to the cell block to have his rest. The accused did not complain about anything.
30. The next day was for the reconstruction of the crime scene during the reconstruction no one assaulted, threatened or had put pressure on the accused. On the second day of the interview the accused had spoken to his lawyer before the interview commenced.
31. After the interview was printed, one copy was given to the accused and the other was kept as police exhibit. The witness was present throughout the interview, in the exhibited caution interview he had signed all the pages. There was no assault on the accused, to date the accused has not made any complaints about the condition of the cell block.
32. In cross examination the witness explained that the caution he had given to the accused was to inform him that whatever he says during the course of the interview will be recorded and if he doesn't wish to say anything it is totally up to him. The witness agreed he had informed the accused about his right to remain silent, but he did not explain the consequences of not remaining silent which was not important because

he did not want to restrict the accused freedom to tell his side of the story.

33. According to the witness after the interview started on day one the first break was at 17.12 hours which was about half an hour later. When the accused was interviewed he was not handcuffed.
34. In respect of the second day's interview the accused had spoken to his lawyer before the commencement of the interview. The witness stated that two copies of the interview were printed, one was kept in the file and the other was kept as a police exhibit.
35. When the witness was referred to Q. 63 and Q. 67 of the caution interview the witness agreed that in the disclosed copy he must have over looked to sign but it was signed by the accused and the witnessing officer.
36. Before the interview the accused was remorseful but after he gave his statement he was relieved and normal. The witness does not know why the accused was taken to the hospital but in serious cases an accused is taken to the hospital for a medical check-up. The witness disagreed the accused was assaulted; threatened or pressured.
37. The third witness DC 3468 Adriu Nadredre informed the court that he was the investigating officer in this case. He had accompanied the police team to Lautoka Hospital and then to Jinnu Road. The witness was accompanied by Cpl. Tobia and SC. Mesake. It was Cpl. Tobia who had arrested the accused and at that time the accused was informed of his right and the reason why he was arrested.
38. At the time of the arrest and whilst travelling to Sigatoka the accused was not assaulted, threatened or put under any pressure. The accused did not complain about anything and appeared normal. At the Sigatoka Police Station the accused was handed over to the Crime Officer.

39. The witness had also accompanied the accused and the police team for the reconstruction of the scene. During reconstruction the accused was not assaulted, threatened or pressured. After returning to the Police Station the interview continued.
40. On 13 June the accused was taken for medical examination because in serious cases an accused is taken for medical examination. On the same day the accused was to be taken to the Sigatoka Magistrate's Court but there was no Magistrate sitting so arrangements had to be made for the accused to be taken to the Nadi Magistrate's Court.
41. On 14th June the accused was produced in the Nadi Magistrate's Court. The witness also stated that when they were going to Sigatoka Police Station from Jinnu Road they did not stop anywhere.
42. In cross examination the witness stated that in this case there was only one suspect. The witness denied that the accused was assaulted and forced by him and the other police officers to admit to the alleged offence. The witness agreed DC Tobia had explained to the accused his rights such as right to consult a lawyer or right to remain silent which he had written in his police statement since the accused was explained his rights.
43. The witness denied the accused was not explained his right to remain silent when it was suggested the reason why the accused had confessed was due to assault, threat and never explained his right to remain silent the witness denied this. The witness also denied that the accused was taken to the hospital because he was assaulted or under duress to confess.

44. The final witness was Dr. Avnit Kumar on 13th June, 2017 he had examined the accused at the Sigatoka Hospital. The medical examination form of the accused was marked and tendered as prosecution exhibit no.2.
45. The specific medical findings of the doctor were as follows:
- a) Nil bruises or abrasions on right flank namely right side of the patient's stomach/abdomen; and
 - b) Nil tender on palpation that is no pain on touch. The doctor had also examined the other areas of the patient from head to toe but there was no injury.
46. The doctor had examined the patient to see if he had sustained any injuries, any tenderness on chest, abdomen, listened to the heart beat etc. Based on his findings the doctor could not ascertain if the patient was assaulted or not. The only complaint by the patient was that he was assaulted on the right side of the stomach/abdomen.
47. In cross examination, the doctor agreed that during the medical examination, the police officer who had brought the patient with his medical examination form was present. The doctor also stated that when the accused came to him, he was not in pain.
48. This was the prosecution case.

DEFENCE CASE

49. The accused informed the court that on 11th June, 2017 he was at Jinnu Road, Waiyavi, Lautoka. When he was woken up by his uncle, he saw one police officer hiding behind the front door of the house. There were 5 police officers in total who had come to arrest him. The

police officer who was at the door of the house grabbed the collar of the accused from behind and forced him to the police van.

50. At the police van, the accused was handcuffed; he was told that they were there to take him for the assault of his brother. He was never cautioned before he sat in the van. The accused was not informed where he was taken to. The vehicle was stopped at Vatudradra Police Post. The accused was told to get out of the vehicle and taken into the Police Post. In the reception area, the accused was seated on the bench when another prisoner was brought and both were cuffed together.
51. Here the police officers swore at the accused and threatened him by saying *"you are the one magaijinana, you are the one"* (by pointing at him). According to the accused, it was his mother's swear before he sat in the van, another slim officer shouted at the accused *"you see the pain in your ass."*
52. The accused had left the police post between 3pm to 4pm, inside the van the police officers were looking at him with grumpy faces and talking in iTaukei language. The accused was frightened.
53. Upon reaching Sigatoka Police Station, the accused was separated from the other suspect and hand cuffed by this time it was almost 4pm. Inside the CID office the main door was closed, there were about 8 to 10 police officers present all of them surrounded him. Some of the police officers were in civilian clothes and some were in uniform, they started pushing him. The CID in charge came from the front and shouted at the accused, *"you the one who hit your brother."*

54. He was told to sit in the middle handcuffed when one officer pointed to him saying "*you the one, you the one*". One officer in civilian clothes who was wearing a canvas kicked his right side under the chest whilst he was seated he fell down when he sat down properly another officer kicked him from behind.
55. When the accused said he was not the suspect the first officer who had kicked him then squeezed his mouth for a few seconds. The accused mouth got swollen and was painful, he could not fully open his mouth.
56. Before the interview he was not given his constitutional rights such as his right to consult a Legal Aid Counsel or relatives. The police officers were holding sticks in their hands furthermore, he was not given his right to remain silent or the consequences of not remaining silent.
57. The interview commenced without the accused constitutional rights given to him, during the interview he did not understand the caution, however, he did understand the words "*not obliged*", the officer had said "*you are not obliged to say anything but to remain silent*", however, he did not fully understand the terms mentioned by the officer.
58. There were three police officers present during the interview, for some questions the accused did not have the answers the police officers forced him to answer by growling at him and threatened him when he remained silent. The accused was given two breaks during day one, when the accused said he can't answer the witnessing officer started screaming and growling at him.
59. The accused was kept in custody for four (4) days from Sunday to Wednesday, the accused did not give his statement on his own freewill but was forced to answer all the questions and also forced to admit.

60. On the second day of the interview the accused was not asked if he wanted to see a lawyer or consult a lawyer. According to the accused he was denied his rights. The accused was under lots of pressure, fingers pointing at him to answer questions, threatening to hit him and so on.
61. The cell block was pathetic, unhygienic with rubbish and bottles inside, there were three suspects inside the cell he had to sit on the floor. The cell had one sponge used as a mattress one person was sleeping on it with one pair of blankets. The accused slept on the floor. He was forced to sign the caution interview the police officers had also threatened to punch him.
62. During the reconstruction on the second day of the interview three police officers accompanied him he was threatened to show the directions when he refused he was forced. He did not know what to say to the questions asked at one point in time he was dragged by his handcuff to show where the weapon was so he just pointed to the ground.
63. When the accused was shown his caution interview he said Q.4 did not have his signature, last page of the interview had his signature, he was given a short time to read his interview which was not enough. The signature at Q. 63 was his but he did not sign at Q. 25 of the interview.
64. The accused was escorted by 3 or 4 police officers to the hospital one of them was the investigating officer. One police officer was present during the medical examination. The accused told the doctor about the assault but could not tell about all the places he was assaulted since the investigating officer was present so he was afraid to tell the doctor everything about the assaults.

65. The accused had told the doctor he was kicked under his chest, no x-ray was done he was briefly checked by the doctor. He had also told the doctor that a police officer had squeezed his mouth and about his swollen mouth. The accused was nervous and afraid because the officers were watching with grumpy faces. On the 13th he could not be produced in Sigatoka Magistrate's Court because there was no Magistrate available so he was produced on the 14th at Nadi Magistrate's Court.
66. In cross examination the accused agreed that he was arrested after midday from Jinnu Road. According to the accused the police officer who had arrested him did not state fully the reasons for his arrest but had stated that *"you are suspected of your brother's assault and we are taking you"*. He was also not explained his right to remain silent or the consequences of not remaining silent.
67. The accused disagreed that he was not assaulted or threatened when arrested and taken from Jinnu Road to Sigatoka Police Station. Upon reaching Sigatoka Police Station at around 4pm he did not make any complaints at the Police Station. During the interview two police officers were present.
68. The accused was not able to recall that the allegation and cautionary words were put to him when he was shown his caution interview he still maintained that he could not recall or understand the allegation or the caution. The accused also stated that he was cautioned but was not explained. When suggested that he had signed because he understood the allegation and caution the accused responded by saying that he was forced to sign.
69. In respect of the assault on him the accused did not ask for medical attention since he was told to go into the cell and the police officers said that he couldn't ask for anything. The accused stated that he was kicked by a police officer who was not wearing a boot as a result he fell on the ground. The same officer also squeezed his mouth as a result he could

not open his mouth it was very painful and swollen inside the next day his mouth was still sore. His right side and his back were also paining.

70. Before the interview started on day two the accused had spoken with his lawyer Ms. Angeline. The accused had the opportunity to tell his lawyer about the police assault and he had explained to her about this.
71. The accused was not sure whether his lawyer has made any complaints against the police officers. He also did not make any complaints against the police officers because the court had stopped him from talking to them so he did not make any complaints.
72. The accused had appeared in the Magistrate's Court the swelling on his mouth was improving including the pain from the kick on his right side. He had the opportunity to tell the Magistrate about his injuries but he did not. However, he had informed his lawyer and he does not know whether she told the court or not.
73. At question 69 he was asked whether he had any sickness he had mentioned that he had pain on his side and mouth. At Q. 70 the accused had said that he was fine because when he didn't answer the police officers forced him to answer.
74. The accused agreed the doctor had examined him from head to toe and on his right side. When it was put to the accused that the doctor did not find any bruises or abrasions the accused stated that the doctor did not x-ray him and the doctor never saw his back or his face. When he went to the doctor his right side of the body and his face were paining. He had shown the doctor his swollen mouth. The accused agreed his medical report did not support his claim of assault.
75. The accused denied that the allegation of assault and threat was false and a made up story. He was not accorded all his constitutional rights during the interview and he was not treated with dignity and respect.

76. In re-examination the accused stated that he was not explained his right to remain silent and the consequences of not remaining silent. At the police station he was assaulted and threatened. He clarified that by assault he meant that he was kicked on his right side and his back, and the squeezing of his mouth. The police officers had threatened him with sticks, shouted and sworn, pointed and yelled at him. As a result he felt very afraid and frightened and nervous so he couldn't say anything to them.
77. During his medical examination the doctor had examined him briefly, he had lifted his shirt and the doctor had touched him. He had also showed the doctor his mouth which was swollen and painful, the doctor did not examine his back.
78. This was the defence case.

ANALYSIS

79. After the hearing counsels were given time to file their written submissions which they promptly obliged.
80. The prosecution wishes to rely on the confession obtained by the police during the caution interview of the accused. The accused is objecting as per the grounds of voir dire filed. The allegation begins from the time of arrest till the end of the caution interview.
81. The police officers involved in the arrest of the accused have denied any wrong doing they have stated that at the time of the arrest the accused was informed of his right and the reasons of his arrest. The accused was normal he was not ill-treated or assaulted or threatened or forced or pressured at any time.

82. The accused after his arrest was taken to Sigatoka Police Station there was no stop over during the journey and the accused was not pressured, forced or threatened or assaulted.
83. The accused was given his constitutional rights including two breaks during day one of the interview. The witnessing officer for the caution interview also supported the evidence of the interviewing officer.
84. The arresting officer who was also the witnessing officer of the caution interview denied any wrong doing at the time of the arrest, during transportation or during the interview or during the reconstruction of the scene.
85. According to the interviewing officer and the witnessing officer the accused was normal, he had signed the caution interview on his freewill and had also given the answers voluntarily. The accused did not make any complaints to any of the police officers or at the Sigatoka Police Station. The investigating officer also supported the version of the arresting officer DC Tobia that the accused was given his constitutional rights at the time of the arrest and the reasons for his arrest. The accused was not assaulted, pressured or threatened by any of the police officers at the time of the arrest and whilst being brought to Sigatoka Police Station.
86. The prosecution also exhibited the caution interview and the medical examination form of the accused and submitted that the accused had signed the caution interview and this document shows that all the rights were given to the accused which he had acknowledged by signing.
87. On the second day of the interview the accused had consulted with his lawyer. If the accused had been assaulted in the manner he had described to the court or was deprived of his constitutional rights then he would have most certainly told his lawyer who no doubt would have raised the issues by way of a complaint at the police station.

88. In respect of the medical report the prosecution says if the accused was assaulted in the manner described by him than most certainly he would have received injuries but the medical findings did not support his contention.
89. In respect of the interviewing officer not signing the caution interview at Q. 63 and Q. 67 the prosecution says the interviewing officer admitted making a mistake whereby he overlooked to sign both the questions in the copy which was disclosed to defence. The prosecution submits that there were two copies made, one copy was kept in the exhibit file which was exhibited in court and the other was kept in the file.
90. The defence on the other hand says that the accused was not given his constitutional rights, he was not cautioned, given the reasons of his arrest but threatened, assaulted and pressured to confess. The accused was assaulted in the CID office, he was threatened at the Vatudradra Police Post and in the police vehicle when transported to the Sigatoka Police Station.
91. The accused was not given his constitutional rights before the interview started the two breaks were not sufficient and in the cell block he was with 3 other people. The accused was not provided with a blanket and was forced to sleep on the floor. The condition of the cell block was unhygienic with rubbish and bottles. This also added to the accused confessing to the allegation.
92. The accused was forced to sign, he did not understand the meaning of caution properly. The accused was sworn at and he was frightened by this experience at the hands of the police officers. During the reconstruction the accused was forced to point to places which he did.
93. The accused did not tell the doctor about the assault in detail because the investigating officer was present.

DETERMINATION

94. At this point in time I would like to state that care ought to be taken by counsel in drafting the grounds of voir dire it was noticed during the hearing that the accused was giving evidence about issues not raised in the grounds of voir dire and/or not put in cross examination to the prosecution witnesses. An example of such a situation which took the defence counsel by surprise was when the accused denied he had signed in the caution interview at some questions.
95. As a result of the above, after the accused had given his evidence I had asked the defence counsel to clarify whether the grounds of voir dire had encompassed all the issues raised by the accused in his evidence. The defence counsel agreed that the voir grounds did not raise any allegation of threat, swearing by police officers, and the accused not signing the caution interview.
96. There is no dispute that the accused was arrested on 11th June, 2017 from Jinnu Road, Waiyavi, Lautoka. The caution interview began the same day at about 16.39 hours at the Sigatoka Police Station. The first break was at about 17:12 hours which was to visit the washroom and after about 6 minutes the interview continued. The second break was at 18:28 hours for the accused to have his dinner which was for about 14 minutes. In my view the breaks given to the accused were sufficient and acceptable in the circumstances.
97. Although the interviewing officer in cross examination had stated that he did not inform the accused about the consequences of not remaining silent it does not in my view cause any unfairness or prejudice to the accused on the totality of the evidence.

98. The caution in the interview is specific which complies with the two limbs of section 13 (1) (a) (i) and (ii) of the Constitution of Fiji namely the right to remain silent and the consequences of not remaining silent. The accused in his evidence had narrated the caution put to him and in cross examination he had accepted that he was cautioned but then stated that he was not fully explained is not credible.
99. The accused appeared to be a person who understood English well hence I find it difficult to understand how he was not able to understand the caution which he was able to narrate. In my view it is an afterthought by the accused when he told the court he did not understand the caution put to him.
100. It is important to note that the accused was taken to the Sigatoka Hospital after his interview I accept the findings of the doctor that he did not observe any injuries on the accused. The accused stated that he was kicked on his right side, however, the doctor did not say anything about even any slight injuries.
101. I do not accept that the accused was afraid because the investigating officer was present during his medical examination. He had in fact told the doctor about the assault which was enough for the purposes of the medical examination.
102. Furthermore, it is noted that the accused had confessed during the first day of his interview hence it is difficult to accept how the condition of the cell block had any effect on the accused in respect of the confessions he had already made before retiring for the night.
103. The caution interview for day one ended at 19:34 hours. Next day 12th the interview began at 16:16 hours before the interview on day two the accused had spoken to his lawyer Ms. Angeline.

104. In respect of the inadequate time given to read the caution interview I do not see how this would have affected the accused he did not specify how much time he wanted to read the caution interview and how much time was given. In his evidence the accused did not say if he had wanted to add or alter anything in his interview.
105. I also do not accept the accused was forced by the police to sign the caution interview. Moreover, on the second day of the interview the accused had spoken to his lawyer and I am certain he was fully briefed about his rights.
106. I accept the accused did not tell his lawyer about how he was treated by the police officers had this been done I am sure his counsel would have raised an official complaint at the police station.
107. This court also notes that section 13 (1) (f) of the Constitution of Fiji states that every arrested person has the right to be brought before a court as soon as reasonably possible, but in any case not later than 48 hours after the time of arrest, or if that is not reasonably possible, as soon as possible thereafter.
108. It is noted from the evidence that the accused was produced in court on the 14th June on the fourth day of his arrest which was clearly over the 48 hours limit given by the Constitution, however, this was the only reasonable opportunity the police had since on the 13th there was no Resident Magistrate available in Sigatoka Magistrate's Court. In my view no prejudice has been caused to the accused in effect the accused was aware of the reasons for the delay.
109. A perusal of the caution interview shows that questions had been put in such a way that it could be comprehended by the accused and that the accused, had, in fact, answered the questions in a logical and consistent manner leaving no room to conclude that the interview had been obtained as a result of any language problems.

110. The manner and the sequence of questioning appear to be plain and simple receiving rational answers, which suggest that the process of interview had been comprehensible. The caution interview, in the circumstances does not appear to have been forced upon the accused taking advantage of the lack of competence of the accused (if any) in English language.

JUDGES' RULES

111. In the voir dire grounds filed the counsel for the accused mentioned that the confessions were obtained in breach of judges rules 2, 4 and 7. Unfortunately, the written submissions filed by the accused counsel did not allude to the evidence that had led to the breaches of these rules. It would have been helpful if counsel in their submissions made reference to the evidence that had led to the breaches.

112. In respect of judges rule 2 the accused did say that he understood the words "not obliged" in the caution and he was able to narrate the caution that was put to him although not in full. This suggests to me that the accused knew the actual meaning of the caution but was deliberately avoiding the truth in his cross examination.

113. The counsel for the accused also relied on the judges' rules rule 4 (e) that the accused was not given the opportunity to correct, alter or add anything in his caution interview because he was not given enough time to read. The accused in his evidence did not say how much time he was given to read and how much time he needed to read the entire interview. This allegation does not part of the grounds of voir dire and appears to be an afterthought. Furthermore, there is no judges' rule 7 as mentioned in the grounds of voir dire filed.

114. It is important to note that judges rules are not rules of law but rules of practice drawn up for the guidance of police officers obviously a system of rules will ensure fair and consistent questioning of suspects, and to exercise control over how police questioning is to be done. They lay down a procedure that a police officer should take into account during various stages of an investigation. It is a code of conduct that the police should adhere to should the rules be breached then police risk that any evidence obtained there from may be excluded at trial upon the court's discretion.
115. The failure by the interviewing officer not to sign the caution interview at Q. 63 and Q. 67 does not in any way affect the voluntariness of the accused confession or cause any prejudice to the accused at all. I accept that the interviewing officer had overlooked to sign these two questions in the caution interview which was disclosed but in any event the exhibited copy has the signatures of this officer. The contents of the disclosed copy of the caution interview and the exhibited caution interview (prosecution exhibit no. 1) are the same, there has been no suggestion by the accused of any fraud.

CONCLUSION


116. Taking into consideration the evidence adduced by the prosecution and the defence and the submissions of counsel this court is satisfied beyond reasonable doubt that the accused had given his answers in the caution interview dated 11th and 12th June, 2017 voluntarily on his freewill without any threat, intimidation, assaults, inducement, oppression or breach of the constitutional rights enshrined in the Constitution of Fiji or in breach of any common law rights.
117. The caution interview was also conducted in circumstances which was fair to the accused. I prefer the evidence of all the prosecution witnesses over that of the accused.

118. In view of the above, I rule that the caution interview of the accused dated 11th and 12th June, 2017 is admissible in evidence and the prosecution may tender the same at trial.

ORDERS

- a) The caution interview of the accused dated 11th and 12th June, 2017 is admissible and the prosecution may tender the same at trial.




Sunil Sharma
Judge

At Lautoka

08 June, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs Iqbal Khan and Associates for the Accused.