

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

**CRIMINAL CASE NO.: HAC 42 OF 2019**

**BETWEEN** : STATE

**AND** : VILIAME RATUBUKETE

**Counsel** : Ms D Rao for the State  
Ms S Devi and Ms M Tuiloma for the Accused

**Dates of Hearing** : 10 – 12 August 2020

**Date of Ruling** : 13 August 2020

**RULING**

1. The prosecution seeks to lead evidence of a confession that the Accused allegedly made to police under caution. The confession was video recorded while the Accused was in police custody at Labasa Police Station. The defence objects to the admissibility of the confession by submitting the following grounds:

**VOLUNTARINESS**

1. The Accused is challenging the video recording in relation to the issue of voluntariness and or its truth. The accused was assaulted during the time of arrest by 4 male i-taukei Police Officer's namely, Officer Drauna, Officer Josaia and 2 other officers whose identity is not known to the Accused. The Accused complains of being punched on his chest area and under arms near the ribs several times.
2. That whilst being arrested, he was hand cuffed and shoved inside the backseat of police vehicle parked at his compound.

3. During his commute to the Labasa Police Station, he was assaulted several times inside the police vehicle by these 4 police officers who continuously punched (knocked) his head with their knuckles, and his chest and side of the ribs. The police officers also slapped his ears.
4. The driver of the police vehicle threatened to assault him further if the suspect did not admit or say anything to the allegation.
5. The driver stopped the police vehicle on the road near the Waiqele River and got one stick from a nearby tree. The driver showed the stick to the suspect and threatened to push him to the carrier of the vehicle and assault him with the same stick. After threatening the suspect, the driver put the stick in the carrier and continued the journey.
6. The assault continued on the suspect until the police vehicle reached Labasa Police Station.
7. During the time of the video recording, there were 3 – 4 police officers present and he felt intimidated and was under the fear of being assaulted again.

### **GENERAL UNFAIRNESS**

1. The Accused was not given his right to consult or communicate with a lawyer of his or her choice in private before commencing with the video recording nor was he accorded the first hour procedure under the legal Aid duty Solicitor Scheme.
  2. The Accused was sleeping at home at the time of arrest and was still intoxicated. He was not given any rest before the commencement of the video recording.
  3. The Accused was not given his rights under Section 13 (1) (a) (b) (c) and (d) of the Constitution of Fiji.
- 2 A trial within trial was held to determine the admissibility issue.

3. In *State v Vasuitoga & Qurai* Criminal Case No. HAC 008/06S (12 February 2007), Shameem J summarized the governing principles as follows:

*"When a suspect gives an inculpatory statement to a person in authority, it must be shown by the prosecution to have been obtained voluntarily and without unfairness or oppression. Further the prosecution must prove that the confession was obtained in accordance with the Constitution, and if there were breaches of the rights of suspects under the Constitution, that the suspect was not thereby prejudiced. The prosecution must prove all these issues to the satisfaction of the court, beyond reasonable doubt.*

*The test for voluntariness is whether the suspect gave his statement freely, without oppression or hope of advantage, or fear of disadvantage. The purpose of the rule of admissibility and of the suspect's rights under the Constitution is to remove the inherent imbalance of power which exists when a suspect is questioned in custody, whilst preserving the right of the police to question anyone in the course of proper investigations and in the public interest. In the determining of issues relevant to the admissibility of confession, these are the principles to be considered, and balanced."*

4. The rights of arrested or detained persons are contained in section 13 of the Constitution. Section 13 states:

(1) Every person who is arrested or detained has the right—

(a) to be 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 be held separately from persons who are serving a sentence, and in the case of a child, to be kept separate from adults unless that is not in the best interests of the child;

(f) 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;

(g) at the first court appearance, to be charged or informed of the reasons for the detention to continue, or to be released;

(h) to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;

(i) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;

(j) to conditions of detention that are consistent with human dignity, including at least the opportunity to exercise regularly and the provision, at State expense, of adequate accommodation, nutrition, and medical treatment; and

(k) to communicate with, and be visited by,—

(i) his or her spouse, partner or next-of-kin; and

(ii) a religious counselor or a social worker.

(2) Whenever this section requires information to be given to a person, that information must be given simply and clearly in a language that the person understands.

(3) A person who is deprived of liberty by being detained, held in custody or imprisoned under any law retains all the rights and freedoms set out in this Chapter, except to the extent that any particular right or freedom is incompatible with the fact of being so deprived of liberty.

5. In *Deo v State* Criminal Appeal No. AAU0015 (16 May 2003) the Court of Appeal held that exclusion of statements obtained in breach of the Constitution is discretionary. The Court emphasized that "the police must be assiduous in advising detained citizens of their rights and failure to do so will prima facie result in the exclusion of statements taken in breach of those obligations." Although an exhaustive list of factors could not be made, the Court identified the following circumstances to be considered in the weighing process:

*"What kind of evidence was obtained? What Charter right was infringed? Was the charter violation serious or was it of a merely technical nature? Was it deliberate, willful or flagrant, or was it inadvertent or committed in good faith? Did it occur in circumstances of urgency or necessity? Were there other investigatory techniques available? Would the evidence have been obtained in any event? Is the offence serious? Is the evidence essential to substantiate the charge? Are other remedies available?"*

6. The prosecution called the following witnesses:

*D/Cpl Josaia Tudru*

*IP Jone Drauna*

*PC Isimeli Vasuca*

*DC Manoa Kasatoka*

*Sgt Prabin Lal*

*Cpl Salote Railala*

*Dr Mereoni Voce*

7. The police officers gave materially consistent evidence. The Accused was arrested from his home on 28 July 2019 at around 9pm. Inspector Drauna led the arresting team. D/Cpl Tudru carried out the arrest. The Accused was placed in the police vehicle. DC Kasatoka handcuffed him. The Accused was advised of the reasons for his arrest and his right to remain silent. The Accused was sober and not drunk although he told the police officers that he had been drinking the previous night.
8. After arresting the Accused, the police officers escorted him to Labasa Police Station in the vehicle. The vehicle was driven by PC Vasuca. The journey from the point of arrest to Labasa Police Station took about thirty minutes.
9. Upon arriving at the police station all necessary entries were made in the station dairy. While the Accused was escorted to the crime office, he voluntarily engaged in a conversation with DC Kasatoka. Both are from the same community and spoke Macuata dialect. DC Kasatoka knows the Accused by his nickname Bruce. During his conversation the Accused relayed incriminating information to DC Kasatoka.
10. DC Kasatoka agreed to video record the conversation on the advice of the Crime Officer after informing the Accused that he was not compelled (forced) to say anything and that if he decides to make a statement it can be used as evidence. The recording was done in the crime office by Sgt Lal using his smartphone. Cpl Salote Railala was present during the conversation to transcribe the conversation in writing. During the conversation Sgt Lal asked a few questions to clarify the Accused's statements. Sgt Lal asked the questions in Hindi and the Accused responded in Hindi. The conversation was about twenty minutes long. In that conversation the Accused gave an account of his involvement in the alleged crime
11. After the conversation, the Accused was locked up in the cell. While in the cell he was provided with a mattress to sleep. The following day he spoke to a legal aid counsel and

complained to him of police assault at the time of the arrest. The police recorded that complaint made to counsel in the station diary.

12. When D/Cpl Tudru approached the Accused in the cell for a formal caution interview after he spoke to legal aid counsel the Accused complained him of body pains. D/Cpl Tudru immediately took the Accused to Labasa Hospital for a check-up.
13. The Accused was medically examined on 29 July 2019 at 12.30pm by Dr Voce. In relaying the history, the Accused told Dr Voce that he woke up with chest pains that morning. After examining the Accused the doctor did not find any sign of physical injuries or trauma. She noted that the Accused was fully conscious and alert. She said she did not witness any intimidation or improper conduct by D/Cpl Tudru during the medical examination of the Accused. She said that the Accused did not appear to be intimidated by the presence of the police officer in the examination room. The medical report of the Accused was tendered by consent and is marked PE1.
14. The defence called one witness. The Accused elected not to give evidence. That is his right and no adverse inference is to be drawn against him for exercising his right to remain silent.
15. The defence witness was Maria Vereivalu. She is a relative of the Accused and witnessed the arrest of the Accused on the night of 28 July 2019 at their home. Her evidence is that two police officers entered their home and approached the Accused who was asleep on the floor in the living room. The first officer kicked him like tapping to wake the Accused. When the Accused did not wake up the second officer kicked him harder to wake him up. The Accused woke up in shock and the police officer held him by his collar and took him outside. They shoved him inside the police vehicle and drove away. She said she only heard the police officers say to the Accused 'you know why they were there'. She did not hear the police advise the Accused of the reasons for his arrest or his right to remain silent or consult a lawyer. She admitted she had visited the Accused at the remand centre once but she did not discuss her evidence with him.

16. The police officers deny the allegations of assault or threats either at the time of arrest or when they transported the Accused to the police station. Their evidence is that the Accused cooperated with them during the time of arrest. The inconsistencies highlighted by the defence in the evidence of the police officers are not material.
17. The evidence of D/Cpl Tudru is that when the Accused made a complaint of assault to legal aid counsel he took him for a medical examination. The medical examination was conducted within 24 hours from the time of arrest. The examination revealed no sign of any trauma on the body of the Accused. The evidence of the defence witness suggests that the police officers used their feet to wake up the Accused who was fast asleep when the police officers approached him. The medical evidence supports the evidence of the police officers that they did not assault the Accused at any stage either at the time of arrest or when transporting him to the police station.
18. There is no evidence that the police officers intentionally inflicted violence or threats of violence or used intimidating or unfair tactics to extract the alleged confession made at the police station. I believe the evidence of the police officers that they did not assault the Accused at any stage but treated him fairly by according him his rights to remain silent and to consult legal counsel. I believe the evidence of the police officers that the Accused was sober and not drunk. This evidence is consistent with the evidence of the defence witness. I believe the evidence of IP Drauna that he advised the Accused that he was being arrested for a serious crime.
19. I believe the evidence of DC Kasatoka that the Accused voluntarily engaged in a conversation with him by telling him about the alleged crime. When that occurred DC Kasatoka cautioned him of his right to remain silent but the Accused continued to make a statement implicating him to the alleged crime. DC Kasatoka said he did not advise the Accused of his other constitutional rights because the Accused voluntarily started the conversation and that the confession was made informally and not during a formal interrogation. He said he did not advise the Accused of his right to consult counsel before the video recording because he knew the legal aid office was closed at that time of the night. I believe the evidence DC Kasatoka and accept that he acted in good faith to secure



relevant evidence for a serious crime of murder by video recording it in the circumstances of this case.

20. I am satisfied beyond reasonable doubt that the Accused freely and voluntarily made the confession and that that the Accused was not prejudiced by any breach of his constitutional rights in the circumstances of this case. The truth of the confession is a matter for the assessors.

21. The prosecution may lead the confession in evidence.



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

**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused