

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 75 of 2015*

**STATE**

v

**RINA ROSSY**

For the Prosecution : **CPL Monish**  
For the Accused : **Mr Paka. A**  
Ruling : **15 December 2017**

**RULING**

1. The accused, Rina Rossy is challenging the admissibility of her caution interview statement recorded by the police for this case. The voir dire grounds were filed on 6 July 2015, by her counsel from the Legal Aid Commission and the grounds are paraphrased as; -
  - a. *That the caution interview was unfairly conducted. She was not asked on her preferred language. She was questioned in hindi language and gave her answer in hindi language but the caution interview was recorded in English.*
  - b. *She was given the record of the interview to sign without any explanation from the interviewing officer.*
2. The case proceeded for voir dire hearing on 1 November 2016.

3. At the hearing, the Prosecution called one witness. The Accused is the only witness for the Defence.
4. Sergeant 2169 Satish Chand is the Prosecution witness. He is the investigation officer, the interviewing officer, and the charging officer in this case. He interviewed the accused in the English language. He asked the accused on which language she wish to be interviewed with and the accused said in English language. All the rights of the accused were given to her. There was no threat or promise made. The accused gave her answers to the questions voluntarily. The contents of the interview were explained to the accused before she signed the record of the interview. The accused did not make any complaint after the interview and the allegation of unfair is not true.
5. The Accused in her evidence stated that she was not asked on which language she wanted to be interviewed on. The interview questions were both in English and Hindi language. She cannot read English very well and she cannot read the caution interview. She was very frightened and she did not ask to be interviewed in Hindi. The duck came into her compound, she caught them and put it in the fence. She confirmed her answer to question 22 and 25 of the interview.
6. In cross-examination, the accused said she was not asked which language she wish to be interviewed on. She then stated that the first question was in which language you want to be interviewed on. She was not asked about her rights. The interview was in polite manner, no threat, and she answered the question on her own free will and the answers were given voluntarily. She understood all the questions asked and she signed her statement. She had no complaint against sergeant Satish.
7. The law in this area was settled by the Fiji Court of Appeal in **Ganga Ram and Shiu Charan v R** (unreported) Criminal Appeal No. 46 of 1983, where it was stated at page 8:-

*".....it will be remembered that there are two matters each of which requires consideration in this area. 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 of prejudice or inducement by offer of some advantage- what has been picturesquely described as "the flattery of hope or the tyranny of fear" **Ibrahim v R** (1941) AC 599: **DPP v Ping Lin** (1976) AC 574. Secondly, even if such voluntaries is established there is also need to consider whether the more general ground of unfairness exists in the way in which police behaved, perhaps by breach of Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. **R v Sanag** (1980) AC 402 436CE. This is a matter of overriding discretion and one cannot specifically categorise the matters which might be taken into account.....".

8. The onus is on the Prosecution to prove beyond reasonable doubt that the confession or admission made by the accused was voluntary, and was made without threats, inducement, promise, or oppression. The Prosecution must also prove that the accused was given his rights and if his rights were breached, the accused was not prejudiced by the breach.
9. The Accused confirmed that she understood all the questions and she gave her answers voluntarily and she signed the record of the interview. She did stated in her cross-examination that the first question is what language she would like to be interviewed on. The accused confirmed that she did not asked to be interviewed in Hindi language. Sergeant Satish stated that he asked her on which language she would like to be interviewed on and she said in English. These evidence are consistent and confirmed that the accused was asked on which language she would like to be interviewed on.
10. In assessing the credibility of the witnesses, I find that the Prosecution witness is more credible than the Accused. In evidence in chief, the accused stated she cannot read english very well but in cross-examination she confirmed that she understood all the questions and she gave her answers voluntarily. This affects the accused credibility and creates doubts on the truth of her allegation. I therefore, accept the evidence of the Prosecution that the accused preferred to be interviewed in the english language and the interview was carried out in the english language. The record of interview was explained to the accused as she

confirmed she understood all the questions and she gave her answer voluntarily. I therefore reject the allegation made by the Accused.

11. In assessing the evidence, I find that the Prosecution had discharge the onus in this case and has proved that the accused admission in her caution interview were made voluntarily. The Accused was not prejudice in any ways.
12. In my ruling, I find that the Accused caution interview is admissible and can be led as evidence at the trial.



C. M. Tuberi  
RESIDENT MAGISTRATE