IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0105 OF 2007
(High Court Criminal Case No. HAC015 of 2006)

BETWEEN: **RO OLIVINI RADININAUSORI** ***Appellant***

A N D : **STATE** ***Respondent***

Coram: **Goundar, JA**
Temo, JA
Madigan, JA

Hearing: **Monday 15th November 2010**

Counsel: **Appellant in Person**
Mr. L. Fotofili for the Respondent

Date of Judgment: **26 November 2010**

JUDGMENT OF THE COURT

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[1] This appellant was tried in the High Court in Suva for murder of her new born baby and found guilty and convicted for the offence on the 8th August, 2007. On the same day she was sentenced to the mandatory term of life imprisonment.

[2] The main thrust of the prosecution case at trial was the content of an interview conducted under caution in the Vunidawa Police Station on the 26th July 2004. This was four days after the birth of her new baby. In that statement the appellant said that throughout her pregnancy she was of a mind to "throw away and kill the baby" after birth. She told of going to the pit toilet when in labour and leaving the baby in the contents of that pit toilet. One week after that cautioned interview she was seen by a psychiatrist at St. Giles Hospital who, after an hour's assessment, opined that the mother was not suffering from post natal depression nor any other form of mental illness.

[3] The appellant gave sworn evidence in her defence. She told of being an outcast in her family and in her village (having already borne a child out of wedlock in 1996). Her life was a life of drudgery, despised by all around her. She kept this pregnancy hidden from all. On the 22nd July she had a severe case of diarrhoea and on going to the toilet the baby came out accidentally and fell into the pit. She then went to CWM Hospital for after-care. She said that when she gave her statements in the police interview she was still weak and confused and the admissions therein were not true – she had every intention to raise the child herself.

[4] On the 30th July 2007 at a pre-trial mention of the case, Legal Aid Counsel appearing for the then accused told the Court that there would be no trial within a trial.

[5] It would appear from the Court record that no voir dire was conducted to determine the voluntariness or fairness of the interview under caution; however the trial Judge was very careful to set out the relevant issues of voluntariness and fairness for the assessors to give weight to, and indeed in the course of the trial, the accused's counsel suggested to the interviewing officer that some of the answers obtained in the interview were obtained under oppression or were fabricated.

The Appeal

[6] The appellant appealed to this Court about one month out of time and leave to appeal to the full Court was granted by the single Judge on the 10th December, 2007. She spent the next two years 10 months trying to persuade the Legal Aid Commission to represent her on this appeal. She now comes before us unrepresented and has filed home-made grounds of appeal by way of a letter dated 13 October 2010.

[7] In her appeal, the appellant seeks to revisit her state of mind during the interview under caution, praying that it was undertaken within days of the most traumatic event in her life, and at the end of a long period of oppression and ill treatment in the village. In addition she now disputes the findings of the consultant psychiatrist who she says focused too much on her pathetic existence in the village and too little on her state of mind on giving birth.

The Law

[8] The law relating to the admissibility of statements made or interviews undertaken under caution is well settled and the principles are the "bread and butter" of every judge and counsel practising in the criminal jurisdiction of common law states.

[9] The classic formulation of the tests as set out in **Ibrahim** [1914] AC 599 has been adopted in Fiji in **Ganga Ram and Shiu Charan** by this Court in 1983 (unreported); the "tests" are known to all and it is not for this Court today to apply them to the instant case.

[10] Obviously, not every objection taken to an interview or statement made under caution is the issue of voluntariness. There could be

claims of fabrication, errors in transcription, denial of rights to a suspect etc. In situations such as these it is not necessary for a voir dire to be held to determine the admissibility of the document; the issues become a matter for the jury (assessors).

[11] This point was addressed by Her Majesty's Privy Council in **Adohya v State** (1981) 2 All ER, 193 an appeal from the Court of Appeal of Trinidad and Tobago when in the advice delivered by Lord Bridge of Harwich, he set forth four typical situations most likely to arise in determining the respective functions of judge and jury in relation to incriminating statements. In the fourth of those scenarios he said this (p.202b):

> ***"On the face of the evidence tendered or proposed to be tendered by the prosecution, there is no material capable of suggesting that the statement was other than voluntary. The defence is an absolute denial of the prosecution evidence. For example, if the prosecution rely on oral statements, the defence case is simply that the interview never took place or that the incriminating answers were never given; in the case of a written statement, the defence is that it***

> ***is a forgery. In this situation no issue as to voluntariness can arise and hence no question of admissibility falls for the judge's decision. The issue of fact whether or not the statement was made by the accused is purely for the jury."***

[12] The principles expounded in **Ajodha** were adopted by this Court in **Mati and Singh** [1992] 38 FLR 120.

Analysis

[13] It is essential that we first consider (as did the Court in **Mati and Singh**) whether there was any prejudice or unfairness occasioned to this appellant at trial which prejudice has resulted in a substantial miscarriage of justice.

[14] We first consider the stance of the appellant's counsel at trial when she told the trial judge at a pre-trial hearing that there would not be a trial within a trial. This counsel was at the time a very senior and experienced officer with the Legal Aid Commission and whilst of course we are not privy to client/counsel communications, it would be inconceivable that the counsel would be acting contrary

to instructions but more likely as a pre-conceived tactic. The appellant before us certainly does not claim contravention of instructions.

[15] There was never a suggestion to the Judge nor to the assessors that the interview under caution was not given voluntarily. The cross-examination of the interviewing officer suggested fabrication or even oppressive circumstances and the judge was very careful to leave consideration of these matters to the assessors. She said this:

> ***"The prosecution relies on the evidence of this interview to show what the accused did and what her state of mind was on the 22nd July 2004. The defence however says that the accused was still weak from her medical treatment, she was confused and that the police officer made up parts of the interview. What weight you put on this interview is a matter for you. If you think that the interview was made up by the Police and that the accused signed a statement she did not make you can't put any weight on it at all."***

[16] It is difficult to imagine how a judge could be more fair in laying before the assessors the issues that they had to consider.

[17] In her letter setting out her grounds of appeal, this appellant raises issues, not so much with her state of mind following the birth but more concerning her tragic life spent in the village since her first child was born in 1996. Such issues, pathetic that they are, were never raised at trial in the context of the interview and even if they were they certainly could not and cannot now impinge on the appellant's state of mind when making statements under caution.

[18] We find no merit in this ground of appeal.

[19] The Consultant Psychiatrist examined the appellant two weeks after the birth. He interviewed her for over one hour and wrote a report which he produced in Court. He spoke to the report and was subjected to what can only be described as a very robust cross-examination. The doctor was unbending in his opinion that this appellant was not depressed when he examined her, nor did she have any symptoms of post-partum depression. She gave relevant answers to his questions which he said showed an ordered mind. The Judge in her summing up gave a fair and balanced overview of his evidence.

[20] The appellant's claim in her written submissions that the psychiatrist only gave general views as to her pathetic life while concentrating his opinion on her state of mind during the "incident" appears to be at odds with her submission that her pathetic existence impaired her mentally at the time of birth and at the time of her police statement.

[21] This Court is not convened to revisit the evidence at trial and being satisfied that the trial was conducted most fairly without any errors of law, we find that none of the appellant's grounds is made out and the appeal is dismissed.

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Hon. Justice D. Goundar
Judge of Appeal

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Hon. Justice S. Temo
Judge of Appeal

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Hon. Justice P. Madigan
Judge of Appeal

At Suva
this 26 November 2010

Solicitors:

Appellant in person
Director of Public Prosecutions Office for the respondent