

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

**CRIMINAL CASE NO: HAC 52 OF 2012**

**STATE**

**-v-**

- 1. MECIUSELA RATU**
- 2. DAVID LOCKINGTON**

**Counsel : Ms S Puamau for State**  
**Accused in Person**

**Date of Hearing : 26-27 August 2013**  
**Date of Ruling : 28 August 2013**

**VOIR DIRE RULING**

1. The State seeks to adduce into evidence the records of a charging interview of the 1<sup>st</sup> accused on 15.3.2012 and the cautioned interview with the 2<sup>nd</sup> accused on 14.3.2012. The two accused object to the admissibility of both these documents on the grounds that those statements were obtained after assaults, threats and oppression.
2. The test of admissibility of all confessional statements made to the Police officers, is whether they were made freely and not as a result of threats, assaults or inducements made to the accused by person or persons in authority. Further, oppression or unfairness also lead to the exclusion of the confession. Finally, where the rights of the suspects under section 27 of the Constitution have been breached, this will lead to the exclusion of the confessions obtained thereby unless the prosecution can show that the suspect was not thereby prejudiced.

3. The preamble of the Judges Rules states as follows:

“That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.”

4. The Privy Council, in the case of *Wong Kam-ming v The Queen (1980) A.C. 247, P.C.*, observed that:

*[t]he basic control over the admissibility of statements are found in the evidential rule that an admission must be voluntary i.e. not obtained through violence, fear or prejudice, oppression, threats and promises or other improper inducements. See decision of Lord Sumner in Ibrahim v R (1914-15) AER 874 at 877. It is to the evidence that the court must turn for an answer to the voluntariness of the confessions.*

5. The Fiji Court of Appeal in case of the *Ganga Ram and Shiu Charan v R (FCA Crim. App. 46/1983)* outlined the two-part test for the exclusion of confessions 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 use of force, threats or prejudice or inducement by offer of some advantage-what has been picturesquely described as ‘flatter of hope or the tyranny of fear.’ Ibrahim v R (1914) A.C. 559; DPP v Pin Lin (1976) A.C. 574.*

*Secondly, even if such voluntariness is established, there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sanag (1980) A.C. 402, 436CE). This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account.”*

6. It is for me to decide whether each of the two interviews was conducted freely and not as a result of threats, assaults or inducements made to each accused by a person or

persons in authority. Secondly if I find that there has been oppression or unfairness, then I can in my discretion exclude the interviews. Finally, if his rights under the Constitution or common law have been breached, then that will lead to exclusion of the confessions obtained thereby, unless the prosecution can show that the suspect was not thereby prejudiced. These rights include such rights as having a legal representative of his choice and having access to family, next-of-kin or religious counselor.

7. The burden of proving voluntariness, fairness, lack of oppression, compliance with common law rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the prosecution. They must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
8. Now I look at the evidence presented in respect of each interview.
9. The charging interview of the 1<sup>st</sup> accused was conducted by DC 3374 Viliame Waqalevu. Giving evidence in this Court he stated that on 15.3.2012 he was attached to Nadi Airport Police unit. He was called to Namaka Police station. Crime officer directed him to record the charge interview of the 1<sup>st</sup> accused. It was commenced at 9.50 hours and concluded at 10.30 hours. The 1<sup>st</sup> accused was informed about the allegation against him. An opportunity was given to him to consult a lawyer, family member or religious representative. He did not exercise that right. He was told that he is not obliged to say anything unless he wish to do so. He was warned that whatever said will be used against him as evidence against him at the trial. He choose to give a statement. He was informed that he could add, delete or alter the statement. He did not do that. He signed the statement.
10. The 1<sup>st</sup> accused did not have any visible injuries. He did not make any complaint. He was not assaulted or threatened. He was not promised anything. No inducement was offered to him. He was not in any discomfort. The witness identified the 1<sup>st</sup> accused in the dock.
11. In cross examination he said that his note book for 2012 is not with him. Further he admitted that no witnessing officer was present due to lack of officers. The opportunity to write down the statement was not given as he wanted someone to write it for him. It was not even suggested by the 1<sup>st</sup> accused that he was having any injuries or he was in pain at that time.

12. DC Peni Tuivaga, the directing officer of the case gave evidence producing the relevant station diary, meal register and cell book. He was not cross examined by both accused.
13. DC Kaliova, who took part in the arrest of 1<sup>st</sup> accused in Ba and arrest of 2<sup>nd</sup> accused in Lautoka also conducted the cautioned interview of the 2<sup>nd</sup> accused. The interview was commenced at 13.25 hours and was concluded at 17.30 hours on 14.3.2012. The 2<sup>nd</sup> accused was given opportunity to meet lawyer, family member or religious counsel. He was informed the nature of allegation and cautioned. He was given breaks during the interview. He was not assaulted or threatened before, during or after the interview. There were no visible injuries and he was not in discomfort.
14. When questioned by 1<sup>st</sup> accused he said he does not have the note book for the relevant period. He denied assaulting the 1<sup>st</sup> accused during the arrest, on the way to Police station or at the Police Station. In the cross examination by the 2<sup>nd</sup> accused he admitted that the 2<sup>nd</sup> accused was not asked to write down the caution interview as that is only practiced in the charge interview. There was no question put to this witness that 2<sup>nd</sup> accused was assaulted or threatened before or during the cautioned interview.
15. DC Josua who arrested the 1<sup>st</sup> accused at Ba and assisted in arresting the 2<sup>nd</sup> accused also gave evidence. DC Emori who arrested the 2<sup>nd</sup> accused also gave evidence. It was suggested to this witness by the 2<sup>nd</sup> accused that he was arrested on 14.3.2012 at 5.00 a.m. and he was assaulted during the arrest, at the time of taking him to Police station and at the Police station. Witness denied all these allegations.
16. After the close of the prosecution case I found a case to answer from the each accused in the trial within a trial.
17. The 1<sup>st</sup> accused gave evidence. His position was that he was arrested on 13.3.2012 at friend's house in Ba around 6-7 p.m. He was told the reason for arrest. He was slapped and punched. His girlfriend who was pregnant was also arrested and slapped. They were first taken to Lautoka Police station and then to Namaka Police Station. He was assaulted and tortured again in the Police station and was put into the cell.
18. The following day his caution interview commenced. He saw the 2<sup>nd</sup> accused also brought into the station. He was slapped twice. He was blind folded and repeatedly punched on the chest area with hands and assaulted with batons on the shoulders and on the knees and the ankles. Chille powder was put into his private parts and rubbed on his face and the body.

19. Due to this torture he signed the statements prepared by Police. His right arm is dislocated since that day.
20. In cross examination by the prosecution he admitted that this is the first time that these allegations are made against the Police officers. He had failed to do so when he was produced in Court. He had also made no complaint to prison officials. Although there were injuries and he was in great pain for two weeks, he had not sought any medical attention while at the remand center. He had admitted that no assault took place during the record of charging interview. But other officers who were there had forced him to sign. He admitted not putting this position in his cross examination.
21. First accused called three witnesses. Those were remand prisoners he met at the Namaka Police station and at the Nadi Magistrate Court. All three of them stated that the 1<sup>st</sup> accused was in pain at the time they saw him. Jone Anu stated that on 16.3.2012 he saw 1<sup>st</sup> accused's left leg scratched and he could not walk properly. Sunia Roraqio stated that when he saw the 1<sup>st</sup> accused on 16.3.2012 he was dragging his left leg. Akapusi Nadavo stated that on 14.3.2012 in Namaka Police station had seen the 1<sup>st</sup> accused dragging his left leg while he was walking. In cross examination he stated that 1<sup>st</sup> accused's head was covered with a cloth and chest was covered with a blanket. He further said that on 13<sup>th</sup> night these injuries were not there.
22. The 2<sup>nd</sup> accused also gave evidence. His position was that he was arrested at his aunt's house in Lautoka on 14.3.2012. He was taken to Namaka Police Station. The 1<sup>st</sup> accused was there. The Police officers have slapped him. He had seen the 1<sup>st</sup> accused having an injury in his left leg. He was subjected to fear of looking at the injuries of the 1<sup>st</sup> accused. He has not given the statement on his own freewill. He had said what Police officers wanted him to say. Whenever he said 'no' he was slapped by the officer who sat beside him. He was promised that he will be released and co-accused will be charged.
23. In cross examination he admitted that he did not suggest this position to relevant witnesses and suggested a different position. He had not made any formal complaint up to date.
24. I have carefully considered the available evidence in respect of the charging interview on 15.3.2012 of the 1<sup>st</sup> accused.

25. Accordingly I have come to the view that in regard to any allegation of assault by the police the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the 1<sup>st</sup>accused that he was assaulted before and during this charging interview. I am satisfied that the interview was voluntary, that it was obtained in fair circumstances, that it was in no way oppressed or beaten out of the 1<sup>st</sup>accused in contravention of his rights either under the Judges' Rules or of the Constitution which was not in operation.
26. The charging interview of 1<sup>st</sup> accused on 15.3.2012, being voluntary made and not created out of oppression is therefore admissible in evidence.
27. I have carefully considered the available evidence in respect of the caution interview on 14.3.2012 of the 2<sup>nd</sup>accused.
28. Accordingly I have come to the view that in regard to any allegation of assault or oppression by the police the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the 2<sup>nd</sup>accused that he was assaulted before and during this caution interview. I am satisfied that the interview was voluntary, that it was obtained in fair circumstances, that it was in no way oppressed or beaten out of the 2<sup>nd</sup> accused in contravention of his rights either under the Judges' Rules or of the Constitution which was not in operation.
29. The caution interview of 2<sup>nd</sup>accused on 14.3.2012, being voluntary made and not created out of oppression is therefore admissible in evidence.

Sudharshana De Silva  
**JUDGE**

**At Lautoka**  
**28<sup>th</sup> August 2013**

**Solicitors : Both Accused in Person**  
**Office of the Director of Public Prosecutions**