

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 332/2011**

**BETWEEN: THE STATE**

**AND: SAMISONI RASIGA**

**COUNSEL: Mr L Fotofili and Mr A Datt for the State**  
**Mr R Vananalagi for the Accused**

**Dates of Hearing: 26-29/08/2013**

**Date of Ruling: 02/10/2013**

**Written Reasons: 18/10/2013**

**VOIRE DIRE RULING**

- [1] The accused Samisoni Rasiga is charged for three counts of rape contrary to Section 207(1)(2)(a)(b) and (c) of the Crimes Decree No:44 of 2009 by Director of Public Prosecution. The state intends to rely on the Records of Interview of the accused.
- [2] The accused objects to the admissibility of a caution interview made on 19-20/09/2011 at Crime Office Levuka Police Station on the basis that it was not voluntarily made but induced by threats and assault. The oral grounds on which he initially challenged the admissibility are:

1. That the accused was arrested from Rukuruku Village by two police officers namely Nakeleto Vodo and Sosiceni Tamani and upon arrest the police officers did not inform the accused of the reason of arrest and did not caution the accused at the time of arrest.
  2. That prior to and during caution interview he was assaulted by three officers from Nausori Police Station and he can only identify one of them as Vilivo.
  3. That the nature of assaults was mainly repeated punches and kicks to the accused's rib-cage as well as being kicked on the thighs.
  4. That the caution interviewing officer fabricated (used the complainant's version) the entire caution interview and the accused was forced to sign.
  5. The accused was taken for scene reconstruction and was basically shown the scene by the officers and the complainant's version of events was relayed to him.
  6. That the father was not allowed to be present in the interview even though he requested for the same.
  7. That there was a breach of his rights under the Judges Rules and article 14(3)(d) of the International Covenant on Civil and Political Rights during his interview by the police.
- [3] The test for the admissibility of statement made by an accused to person in authority is whether it was voluntary, obtained without oppression or unfairness or in breach of any Constitutional Rights. The burden proving voluntariness, fairness, lack of oppression and observance of constitutional rights rests on the prosecution and all matters must be proved beyond reasonable doubt.
- [4] Evidence of threats of violence, if accepted by the court, is sufficient to raise a reasonable doubt as to voluntariness. If what the accused says is true, it would create an oppressive climate of fear.

### The Law

- [5] The principles governing the admissibility of an admission or a confession are well settled. A confession or an admission made by an accused to a person in authority could not be properly given in evidence unless it was shown that it was made voluntarily, that is, not obtained through violence, fear or prejudice, oppression, threats and promises or other inducements (**Ibrahim v R** {1914} AC 59). Even if such voluntariness is established, the trial court has discretion to exclude a confession or an admission on the ground of unfairness (**R v Sang** [1980] AC 402). A further ground that an admission or a confession could be excluded is for breaches of constitutional rights.
- [6] Oppression is anything that undermines or weakens the exercise of free will (**R v Prestly** [1965] 51 Cr. App.R). The onus of proving voluntariness, fairness and lack of oppression is on the prosecution and they must prove these matters beyond a reasonable doubt. If there has been a breach of any of the accused's constitutional rights, the prosecution must prove beyond a reasonable doubt that the accused was not thereby prejudiced.

### The Prosecution case

- [7] At the Voire Dire inquiry Prosecution called 05 witnesses in the following order.
- [8] Sosiceni Tamani has been a police officer for 18 years. On 03/03/2011, he had commenced investigations regarding a rape committed on a female English volunteer in Rukuruku Village. As the police suspected Jovili Mua and Samisoni Rasiga both had been taken to police for investigations. After a verbal inquiry, both had been released forthwith.
- [9] On 19/09/2011, on the instructions of Crime Officer Levuka, Tomasi Tukana had gone to Rukuruku Village with police officers Bower and Vodo to check Samisoni Rasiga. He was arrested and brought to the police station.
- [10] He denied that police assaulted the accused on 05/03/2011 and 19/09/2011.

- [11] Police officer Nakeleto Vodo who had gone to Rukuruku Village on 19/09/2011 corroborated the evidence of Sosiceni Tamani.
- [12] On 19/09/2011 accused was caution interviewed by George Bower at 10.00pm. Interview was conducted at CID Office Levuka in the presence of police officer Viliame Volau and Vilivo Ratumaisala. All the rights were given to the accused. Caution Interview was recorded in Itaukei language in question and answer form. Accused was normal during the interview. Interview was commenced on 19/09/2011 and concluded on 20/09/2011. Accused, George Bower and witnessing officers placed their signatures after completion of the caution interview statement. Original caution interview statement hand written Fijian version was marked as P9 (a), and its typed version was marked as P9 (b) and translated English version was marked as P9(c). He identified the accused in open court.
- [13] In the cross examination Bower said that accused was not beaten on 05/03/2011. Witness reiterated that he cautioned the accused before recording the caution interview statement. He denied that the interview notes were fabricated by him.
- [14] Viliame Volau was the witnessing officer of the caution interview statement of the accused. All the rights were given to the accused before recording the interview. He was normal and answered the questions voluntarily. Witness identified P9 (a) in open court.
- [15] Vilivo Ratumaisala was the second witnessing officer to the caution interview statement of the accused. According to him interview was conducted in a fair manner. He identified his signature on P9 (a). He identified the accused in open court.
- [16] Accused gave evidence and called one witness.
- [17] On 5/3/2011, in the afternoon, the police officers took Jovili and himself to Levuka Police Station for investigation. At the police station he was beaten by the police officers on his ribs and slapped on his right side of the face. He could not identify the police officers who assaulted him on 5/3/2011. He only identified Vilivo who kicked his thighs. This lasted about two hours and he got black eye on his right side of the face. He was then released and given his bus fare to go home. As last transport arrived, he went back home without going to the hospital. When he got back home his father and the rest of the family were

drinking grog. He told his father to give some massage to his body. As his left ear was bleeding, his aunt Venina had treated him with Fijian medicine. Injuries lasted about three days.

- [18] On 19/09/2011 he was arrested and taken to Levuka Police Station for questioning. He denied the charge. In the police station he was threatened by police officers to admit the charge. He was taken out from the cell at about 10.00pm and took his signature to some documents. He identified his signature on P9 (a).
- [19] In the cross examination witness admitted that he never complain to anybody with regard to police assault, even to learned magistrate before whom he was produced on 29/09/2011. No complaint lodged to the village headman with regard to police assault.
- [20] Livai Ravonu, accused's father corroborated what accused said in his examination in chief. Further he was not allowed to see his son on 20/09/2011 at Levuka Police Station.
- [21] In the cross examination he admitted that he did not lodge any complaint at all about the police beating to anybody up till now.
- [22] The accused's main contention is that he was not present during the caution interview. He was only taken into the interview room by police officer Bower to sign the caution interview statement. The witnessing officers had already signed the caution interview statement dated 19-20/09/2011. According to him he was originally caution interviewed after beating on 05/03/2011. But no signature obtained. Hence he submits that his caution interview statement was fabricated by the police.
- [23] According to prosecution he was properly caution interviewed on 19<sup>th</sup> and 20<sup>th</sup> September 2011. Further accused was never beaten or forced to make a statement by the police. All his rights were given to him before recording his interview. His caution interview statement was recorded in the presence of two witnessing officers.
- [24] Having heard the evidence by prosecution and the defence, I accept the evidence of the police officers that the accused's caution interview statement was recorded fairly, without any intimidation or fabrication.

- [25] I am satisfied that the prosecution has proved beyond reasonable doubt that the accused made the Caution Interview Statement voluntarily. I have considered the demeanour of all the witnesses who testified before me.
- [26] I find the Caution Interview Statement to be admissible in evidence.

P Kumararatnam  
**JUDGE**

At Suva  
18/10/2013

