

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 090 OF 2011

STATE

-v-

AVINIT SINGH

Counsels : Ms. L. Latu for the State
Ms. L. Raisua for the Accused

Date of hearing : 4 - 5 September 2014
Date of Ruling : 8 September 2014

Voir Dire Ruling

1. The State seeks to adduce into evidence the record of a caution interview of the accused on 9.5.2011. The accused objects to the admissibility of this document on the following grounds:
 1. That his confessions were obtained by force, assault, threats and inhumane treatment by the Police officers upon his arrest, during his caution interview and until His alleged confession to the alleged offence.
 2. That he was assaulted with a belt and police baton at the Namaka Police Station upon his arrest. He does not know the officers by name but recognizes them by their faces.
 3. That his life was threatened when one of the officers placed a small knife to his neck while his face was covered with a blue/black jacket (probably a police jacket).
 4. That he was threatened that if he did not confess to the allegation, he would be handed over to the deceased's family.

5. That he was locked up in the cell naked, with his hands and legs tied together while the police would assault him and stand on his chest.
 6. That he was refused medical assistance when he requested to see a medical officer.
 7. That he confessed to the allegation because he feared for his life and he did not want to be exposed to any further assaults, force, threats and inhumane treatment whilst under the custody of the police upon his arrest.
2. The test of admissibility of all confessional statement made to the Police officers, is whether that was 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 leads to the exclusion of the confession. Finally, where the rights of the suspect under 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 over bearing 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."*

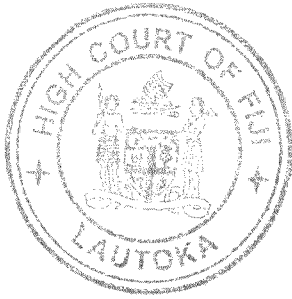
6. It is for me to decide whether interview was conducted freely and not as a result of threats, assaults or inducements made to the accused by a person or persons in authority. Secondly if I find that there has been oppression or unfairness, then I can in my discretion exclude the interview. Finally, if his rights under the Constitution or common law have been breached, then that will lead to exclusion of the confession 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 the caution interview.
9. The first witness was DC Abdul Hakim Khan. On instructions received from Sgt. Anoop he had caution interviewed the accused at the crime office Rakiraki police station. Sgt. Anoop was the witnessing officer and JP Mr. Hydar Begg was also present. It was conducted in English language in question and answer format. It was commenced at 11.45 a.m. The accused was given his rights. He had taken notes. The accused did not make a complaint before, during or after the interview. The accused was normal and cooperative. The interview was concluded at 8.10 p.m. He identified and tendered the original interview notes. He also identified the accused. The accused had no visible injuries.
10. Under cross examination he said that he was unaware of the time of arrest of the accused at Nadi. The accused was brought to Rakiraki police station by DCO-West SSP Manasa. He admitted that co-accused was caution interviewed first. He denied that Sgt. Anoop was not


present throughout the interview. He denied that only some answers were given by the accused. The purpose of Mr. Begg's presence was to have an independent witness. He denied that Sgt. Anoop interfered with the answers given by the accused. He denied knowledge of the accused being assaulted when he was arrested. He denied that the accused was forced to sign the interview.

11. The next witness for the prosecution was Sgt. Anoop Kumar. He is an officer with 24 years experience. He was the acting crime officer and investigating officer of this case. The DCO had brought the accused to the station. DC Hakim was the interviewing officer and he was the witnessing officer. Mr. Hydar Begg was called as this was a serious case and to ensure fair interview of the accused. The accused was cooperative. Hakim was asking questions and the accused gave answers. He and Mr. Begg were present throughout the interview. The accused did not make any complaint before, during or after the interview. There were no visible injuries on the accused.
12. Under cross examination he admitted that DSO-West was in Rakiraki police station for some time. He had directed that Mr. Begg should be present. Accused was given the right for a person of his choice to be present. He did not exercise that right. The accused was explained about Mr. Begg's presence. He denied that Cpl. Binesh came to the interview room during the interview to intimidate the accused. He denied that the accused was forced to sign the interview.
13. The third witness for the prosecution was Mr. Hydar Begg. He is a JP since 2004. Sgt. Anoop had called him to the Rakiraki police station to be an independent witness of an interview. Hakim was interviewing the accused. Anoop was also present. Accused was normal and gave answers without fear. There were no injuries on his face. Accused did not make any complaint. During the break he had personally asked the accused whether he was assaulted by police. Accused replied in negative. He identified the accused in Court.
14. Under cross examination he stated that reason for his presence was explained to the accused. No other officer had come to the interview room except Hakim and Anoop during the interview. The accused was not forced to sign the interview.
15. After the close of the prosecution case, I found a case to answer from the accused in the trial within a trial and explained the accused his rights.
16. The accused gave evidence. He stated that on 8.5.2013 he was at his mother's house in Votualevu, Nadi. Around 4.00 p.m. two police officers came to his house. He was told that his wife's father had made a complaint against him and he had to come to the station. He had gone to Namaka police station with them. Then he was taken to a room and four to six officers started beating him. While he was sitting in a chair his hands and legs were handcuffed from behind. He was slapped three to four times. Then he was beaten with a belt.

He was also punched on the stomach. His legs were assaulted with a baton. A police jacket was put on his face and a knife was put at his neck. He had internal pain. The top of the beaten areas were reddish and swollen. He was beaten again on the way to Lautoka at Sabeto. His hands were handcuffed and he was assaulted on the stomach. He was put in the cell at Lautoka police station.

17. He was hungry and shouted for food. One Indian officer came and told him food time is over. He took all his clothes away. It was cold and he was naked with nothing to sleep on. He was given food and clothes next morning and taken to Rakiraki police station. He was explained the presence of Mr. Begg. Some answers in the caution interview were given by him and others by the Indian police officer. He had signed the caution interview. When he was taken to Ba Magistrate Court he had not complained to the Magistrate as he is unaware of the law. He had mentioned this to JP but could not tell him everything.
18. Under cross examination he admitted that he did not make a complaint to Hakim, Anoop or Mr. Begg. A Legal Aid lawyer had appeared on behalf of him at Ba Magistrate Court. He did not tell him about the assaults. When he went to Court he was still in pain. But he had not complained to anyone except his uncle. He admitted that he was not assaulted or threatened by Hakim or Anoop. He also admitted that he came up with this assault complaint only in 2012.
19. I have carefully considered the available evidence in respect of the caution interview on 9.5.2011 of the accused.
20. Accordingly I have come to the view that in regard to any allegation of assault or threat by the police before and during the interview, the state had satisfied me beyond reasonable doubt that it did not happen. I reject the evidence of the accused that he was assaulted before the interview and was forced to sign the interview. I am satisfied that the interview was voluntary, that that was obtained in fair circumstances, that that was in no way oppressed or beaten out of the accused in contravention of his rights either under the Judges' Rules or of the Constitution. The independent witness who was present confirms this position.
21. The caution interview of the accused on 9.5.2011, being voluntary made and not created out of oppression is therefore admissible in evidence.




Sudharshana De Silva
JUDGE

At Lautoka
8th September 2014

Solicitors: Office of the Director of Public Prosecution for the State
Legal Aid Commission for the Accused