

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 138 of 2012

BETWEEN : **THE STATE**

AND : **TAITO SENINAWANAWA**
 KINIJOJI VUDA
 JONE MASIREWA

Mr F Lacanivalu for the State
Ms Jiuta (L.A.C.) for the First and Third Accused.
Second accused absent

Date of Hearing : 13th, 14th, 15th and 16th October 2014
Date of Ruling : 17th October 2014

RULING

[1] The State seeks to admit into evidence in trial on the general issue records of interview conducted by the Police with the three accused under caution, the said interviews being conducted in Namaka Police Station on the 28th and 29th September 2012 as follows:

- The first accused: a record of interview under caution between 2035h on 29.09.12 to 17.30h on 30.09.12, together with an answer to charge on the 30.09.12 from 1300h to 1400h.

- The second accused: a record of interview under caution on 29.09.12 from 1210h to 1800h, together with an answer to charge made on 20.09.12 from 1805h to 1819h.
- The third accused: a record of interview conducted from 2035h on 29.09.12 to 1730 h on 30.09.12 along with an answer to charge made on 30.09.12 from 1300 to 1400h.

[2] The first accused objects to the admission of both records pertaining to him on the basis that they were generated involuntarily on the following grounds:

- [i] His confessions were obtained under threat pressure, verbal and physical abuse and that the records are not a true record of what transpired
- [ii] He was not cautioned at the time of his arrest
- [iii] He was hit on the head, punched and kicked and sworn at by the arresting officers. He was threatened to admit to the allegations or further physical abuse would be done to him
- [iv] He was taken to a sugar cane field in Sabeto and was beaten up; punched several times on the body, sworn at and kicked on his chest and back by the arresting officers.
- [v] He was forced to sign his interview without being aware of the contents.
- [vi] He was not given sufficient breaks.

[vii] He asked to be taken for a medical examination but this was refused.

[3] The second accused having absconded was not present to make any objections to the admissibility of his records

[4] The third accused makes the following objections to the admissibility of his records:

[i] His admissions were obtained under threat, pressure, verbal and physical abuse and as a result the records are not true records of proceedings.

[ii] When he was arrested he was made to walk on his knees in an isolated place and was punched kicked and sworn at.

[iii] The arresting officers inserted a piece of fishing line through his "nasal" (sic) when he denied the allegations.

[iv] He was forced to sign his interview.

[v] He was hit over the head with a black rubber hose.

[vi] The answers were fabricated by the Police and he was given a chance to read through the record and he was told where to sign.

[vii] He was rubbed all over with chillies including genitals and a blunt object was inserted into his anus, covered with chillies.

[5] I am aware that the test of voluntariness is that the State has to prove to me beyond reasonable doubt that the Records were generated voluntarily without improprieties. The accused himself has to prove nothing. Even if I were to find that the Record was generated voluntarily, it would still be inadmissible if there were evidence that it was generated by or the answers obtained by oppression.

[6] I bear these tests and findings uppermost in mind when considering the evidence.

The Prosecution Case

[7] In its case on the admissibility of the records the State called 13 police witnesses. I do not propose to deal with the evidence of all the witnesses for reasons that will become apparent. I will return to the prosecution case shortly.

The Defence Case

[8] The first accused elected to remain silent. In doing that he is saying that the prosecution has not proved their case against him, however by remaining silent he has not provided the Court with any evidence of improprieties.

The allegations are not evidence nor are the matters put to the witnesses in cross-examination evidence unless the witness agrees with them. Put simply there is no evidence before me of assault threats inducement or oppression to the extent that his free will was affected and I must therefore accept the Police evidence given

with reference to the first accused that he was treated fairly. I find the evidence of the officers dealing with the first accused to be consistent and credible and I am confident I can rely on it.

[10] I have no option but to find that the records of interview and charge for the first accused were generated voluntarily.

[11] The second accused, having appeared on the day when the date for these proceedings was fixed, has absconded and a bench warrant has been issued to bring him to Court. In full knowledge that these proceedings were to commence on the 13th October, he was not present to advise the Court of any objections he might have to the admissibility of his records and his voluntary absence has been to his own prejudice. The police evidence also in respect of the second accused is consistent and credible and again I find that I can rely on it.

[12] Without objection to the records, I again have no option but to find his record of interview and his answer to charge to have been voluntarily made and admissible against him on trial of the general issue.

The Prosecution Case against the third accused

[13] Five Police witnesses gave evidence in respect of the third accused.

[14] PW3 Senitiki told the Court that on the 29th September 2012, he went with PC Penaia to the reported address of the 3rd acc ("Jone") to arrest him on suspicion of complicity in a hotel burglary. He said it was at about 5am and there were only the two of them that went. Jone was found at the house and was put under arrest and PC Penaia cautioned him. He saw that Jone had a cut on his lower lip

- [15] PW4 PC Penaia said that Jone was arrested at the house and Senitiki cautioned him. In cross-examination he admitted that there were about 4 officers present in the Police arresting party. They took Jone from the house directly to Namaka Police Station where they arrived sometime between 7 and 8am .
- [16] PW5 Josua , was the officer who formally charged Jone. At the time he saw that Jone had a cut lip. He didn't make a note of it nor did he ask him how he got it. He said that Jone complained to him of body pain.
- [17] PW6 Nagata said he was a witness to the interview under caution. He said that Jone made no complaint during the interview. He admitted that he had not signed the record of interview as the witness - he "overlooked signing it "
When asked specific questions about the interview in cross-examination he answered "I don't recall" to each question.
- [18] PW7 Inosi Ravono was the officer who interviewed Jone under caution. He saw injuries on the lip and on the eye. The suspect had complained of body pain to him and had said that he wanted to go to the hospital. He was taken to the hospital before the interview was finished. When asked why the witness had not signed the record of interview, he could not recall the reason. He thought that the suspect had sustained his injuries at the time of the arrest.
PW12 Apakuki was the officer receiving Jone at Namaka Police Station. He saw that he had a minor cut on his right bottom lip. He was able to say from seeing the Cell Book that Jone was locked into a cell at 10.50am.

The Third Accused's two medical examinations

[19] The suspect was first taken to hospital before his interview finished on 29th September 2012. He related a history of "being assaulted by Police Officers". On examination he was found to have the following injuries:

- Bruise on the right zygomatic process (temple region)
- Bruise on the left cheek
- Abrasion on his right lower lip
- Swelling on his left foot
- A complaint of numbness in the thumb (but no injury seen)
- Normal gait, but able to weight bear.

[20] A subsequent examination on 2 October 2012 (ordered by the Magistrate) was conducted on Jone. He complained to the Doctor of having been "assaulted in the early morning of the 29th September 2012 – punched and kicked on the face, left hand and leg". The medical findings were:

- Right lower eyelid bruised
- Abrasion on corner right lower lip
- Swelling of left medial ankle.

The third accused in defence

[21] Jone Masirewa gave evidence under oath. He is 32 years old.

On the 29.09.12 at around 5am, he was bathing before going to work. Three men came into his room, told him to get dressed and go with them. They didn't say why but dragged him out of the house. Outside there were three twin cab vehicles all rental vehicles. When they were all in the vehicle they told him that he was suspected of being involved in a robbery in Nadi. He was then taken to an isolated place in Tavakubu. He was made to get out, to

kneel on the ground and walk on his knees to where there were another two suspects. He did that for about 5 metres. They were kicking him, and making him move quickly on his knees. When he got to where the other suspects were they started to kick him and hit him with batons and fists on his legs. All the while they were blaming him for the offence. This assault lasted for about 40 mins to one hour.

[22] From Tavakubu, he was taken to Lautoka Police Station and to a bure at the back. They were continually interrogating him over a period of 30 minutes. He was kicked and slapped. They then took him to Namaka Police station to the Crime Office where he was made to sit on a chair.

[23] In the Crime Office he was interviewed under caution. He freely answered the questions about personal details. He complained to the interviewing officer about his injuries he had from the assaults. He said that they were a cut lip, a black eye. Swollen arm and leg and swollen thumb. He got the cut lip from punches. When in the interview, he denied knowing anything about the robbery, he was again assaulted. He was frightened and scared. They forced him to sign the interview by threatening to assault him again if he didn't.

[24] After the interview he was taken to an isolated place somewhere between Nadi and Lautoka. He was stripped naked and chillies were rubbed on his genitalia and anus.

[25] At his first appearance in the Nadi Magistrates Court on 01.10.12 he complained to the Magistrate, who ordered another medical examination.

[26] I am well aware that the accused does not have to prove anything to me – the burden of proof remains on the state at all times. Even if I don't believe a word he says, it doesn't matter if I find that the State has proved to me beyond reasonable doubt that the statements are voluntary. The 3rd accused's evidence was not entirely satisfactory and parts of it I did not believe but that matters not. It is the Police evidence that I must have confidence in.

Analysis

[27] Although the evidence of the officers was reliable and believable in respect of the first and second accused I have grave misgivings about the officers who gave evidence as to their dealings with the third accused.

[28] The two arresting officers contradicted each other, not on just trivial matters, but on issues such as to if Jone was cautioned and if so by whom.

[29] DC Senitiki insisted that there were only two officers present at the arrest but PC Penaia admitted that there were four.

[30] I do not believe that PC Nagata was present as a witness throughout the interview and he has misled the Court with his evidence. If he had been there when the interviewer and the suspect were signing (and they did), he would not possibly have "overlooked" to sign. He was unable to answer simple questions put to him that he would have been able to answer had he been present.

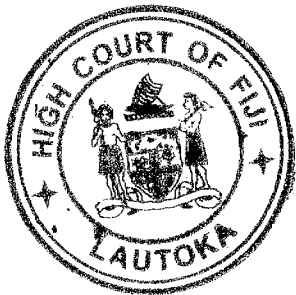
[31] It is a matter of concern that there are at least 2 if not 3 hours in the morning of 29.09.12 unaccounted for when Jone was in police

custody. Every officer says that he saw the cut lip, but nobody saw the other injuries that a medical examination revealed.

[31] The medical evidence is of course consistent with assault and there has been no evidence as to how these signs of violence may have been inflicted. On the contrary the Police chose to say they didn't see any.

[32] I find that I cannot trust the evidence of the Police who were involved with Jone. As a result the State has not proved to me beyond reasonable doubt that his records were generated voluntarily.

[33] The records of interview and of Charge are therefore inadmissible in the trial on the general issue.



P. Madigan J.

JUDGE

At Lautoka

17 October 2014.