

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 78 OF 2013

STATE

V

KOLAIA RALULU

**Counsel: Mr. A. Datt for the State
Mr. W. Nainima for Accused**

Date of Hearing: 22nd June, 2016

Date of Ruling: 5th July, 2016

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the cautioned interview statement and the charge statement of the accused, made at the Ba Police Station on 14th and 15th of April, 2013 respectively.
2. The test of admissibility of all confessional statement made to a police officer 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 suspects 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. Accused objects to the admissibility of his interview on the grounds:
 - (I) The confessions are involuntary since they have been obtained through pressure,

duress and force by an iTaukei police officer at Ba Police Station during the duration of his interview.

- (II) The confessions are involuntary since the accused was physically assaulted while taking his first and second break from his interview in the Ba Police Station which resulted in him being pressured into confessing to the offence in his caution interview.
- (III) During the caution interview, the answers to the questions asked and answers recorded were not contemporaneously recorded and it was fabricated by the Interviewing Officer and the pain sustained from the assaults by the Police gave him no choice but to sign the caution interview as directed by the Interviewing Officer. He was not allowed nor given a chance to read the contents of his statement and caution interview and was told only to sign.
- (IV) Furthermore, the accused was frightened from being threatened by the Police and from further assaults as such confessed to the allegations.

- 4. What I am required at this stage is to decide whether the interview and charging were conducted fairly and whether the accused gave the statements voluntarily. If I find that the signature of the accused was obtained by the Police forcibly, then I can in my discretion exclude the interview and charge statements.
- 5. The burden of proving voluntariness, fairness, lack of oppression, compliance with constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that. Allegation of police fabrication raised in Ground III is not an admissibility issue to be determined at this stage.
- 6. Now I look at the evidence presented at the trial within trial.

Case for the Prosecution

DC 2982 Tomasi Nakeke

7. Prosecution called DC Tomasi Nakeke of the Ba Police Station as its first witness. He interviewed the accused on the 14th and 15th of April, 2013 at the Crimes Office of the Ba Police Station.
8. After receiving a report of allegation of rape and abduction, he conducted the interview of the accused and recorded the answers given by accused which were later typed. Before the interview was conducted, accused was explained his Constitutional rights and properly cautioned. Accused was given the interview statement to be read and given the opportunity to add, alter or correct as he wished. Having read the same, accused placed his signature.
9. Interview lasted for two days. Accused was given sufficient breaks to rest and relieve. He accompanied the accused to the toilet. He also accompanied the accused to the scene of crime for reconstruction. Neither he nor any other officer assaulted the accused during the interview or reconstruction. No verbal threats were made. No promises or inducements were offered to obtain a confession.
10. Under Cross-examination, witness admitted that there was no witnessing officer present during the interview. Accused was very cooperative; therefore no need arose for a witnessing officer to be present. There was no special direction received from superior officer to conduct the interview in the presence of a witnessing officer.
11. He denied that there was another iTaukei police officer was also present during the caution interview, forcing the accused to admit the allegation. He also denied that accused was assaulted by another officer inside the toilet during a break and that accused came back to him in pain and complained.
12. Witness said that he was not required to make notes in the police station diary with regard to breaks given to the accused during the interview. He recorded about the breaks given

to the accused in the interview itself.

13. He denied failing to give an opportunity to the accused to read the interview before obtaining his signature. He also denied fabricating the interview.

DC Suraj Ravi Raj

14. DC Ravi Raj was the Charging Officer. He also escorted the accused from the Ba Police Station to cemetery road Varadoli, Ba, for reconstruction of the scene.
15. He typed the answers given by the accused on the laptop. Then he obtained a print out and handed it over to the accused to be read and signed. Accused was calm and very cooperative. He did not complain of anything. Accused made the charge statement on his own free will.
16. DC Tomasi Nakeke and Sgt. Parmesh were with him during reconstruction. He did not see anybody threatening or assaulting the accused.
17. Under cross examination, DC Ravi Raj said that charging was conducted at the crimes office. No one other than the accused was present in the room. He recorded all the answers given by the accused including the answer to question No. 19 relating to oral sex.

Case for the Defence

18. Accused, Kolaia Ralulu, said that whilst interview was being conducted by DC Nakeke, one Police officer was standing on his right and was trying to threaten him. When he was denying the allegation that officer threatened him saying; 'hey, tell 'yes' otherwise I will punch you'. He felt afraid.
19. Before signing, he was not given the record of interview to be read. Accused said that parts of the interview had been fabricated by police. Officer Nakeke did not accompany him to the toilet. When he was in the toilet another officer came and punched him inside

the toilet. He was punched only once on his ribs. Assault took place on the first day of the interview.

20. He was in pain. He did not complain to anybody because he was afraid of the police officers who knew each other.
21. Under Cross examination, he said that he was assaulted only once although his Counsel had mentioned about two assaults in the *voir dire* grounds.
22. Accused said that not all the answers but only some of them had been fabricated by police. He admitted that answers given in favour of him wherein he had denied the allegation of forceful sexual intercourse had also been properly recorded.
23. Accused also admitted that he had failed to complain about the alleged police assaults to anybody including Courts and his parents. He informed his parents only when they asked.

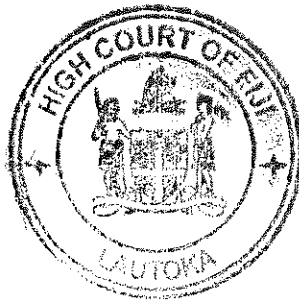
Analysis


24. I find that the evidence of the Police Officers to be consistent and plausible. Throughout the proceedings, Prosecution witnesses maintained that any kind of assault or intimidation never took place before or during the interview. Interviewing Officer Tomasi Nakeke, Charging Officer Suraj Raj maintained that no assault or intimidation took place during interview or charging.
25. During the interview, no witnessing officer had been present. However, interview had taken place in a common room shared by other officers. Record of interview indicates that parents of the accused were present during the interview. From 18.20 hrs. to 18.40 hrs., the interview had been suspended for accused to meet his parents. However, he had not complained to them of any police assault. When he was produced before the Magistrates Court, he had communicated with the Magistrate even though it was his first time in court and made submissions in his defence in order to support his bail application. He had ample opportunity to complain to the Magistrate if he was actually assaulted or threatened at the police station.

26. Version of the accused is not consistent and plausible. According to *voir dire* grounds, accused had been physically assaulted twice during breaks. In his evidence, he talked of only one assault and vehemently denied that he was assaulted twice by police officers.
27. His allegation of police fabrication was not supported by evidence. All the answers given in his favour had properly been recorded. If police officers wanted to fabricate the allegation, they could have done so without intimidating or assaulting the accused. The fact that answers favourable to the accused are also present in the record of interview suggests that accused had not been threatened. It appears that accused had the opportunity and freedom to deny the allegations if he wished to do so.
28. Evidence of the accused is not appealing to me. I reject the evidence of the defence. Burden of proof was on the Prosecution to prove that the accused made the confession voluntarily. Prosecution discharged that burden. Accused failed to create any doubt in the Prosecution case.

Conclusion

29. Prosecution proved that the accused's interview and charge statement were obtained voluntarily and fairly. I hold cautioned interview statement and charge statement to be admissible in evidence.




Aruna Aluthge
JUDGE

At Lautoka
5th July, 2016

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