

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

**CRIMINAL CASE: HAC 108 OF 2012**

**BETWEEN** : STATE

**AND** : RAVINESH SINGH

**Counsel** : Mr. S. Nath for State  
Mr. R. Vananalagi for the Accused

**Date of Hearing** : 20th and 21st of October 2016

**Date of Ruling** : 24th of October 2016

**RULING ON VOIR DIRE**

1. The Prosecution proposes to adduce the caution interview made by the accused on the 9th of August 2012 in evidence. The accused objects the admissibility of the caution interview in evidence on the following grounds, *inter alia*;

*"The accused was seriously assaulted by the following police officers before his interview,*

*i) Police Officer Ilaitia*

*ii) Officer Shailend,*

*iii) Officer Wayne,*

*iv) Officer Maciu,*

2. The voir dire hearing was conducted on the 20th and 21st of October 2012. The prosecution called four witnesses during the course of the voir dire hearing. The accused gave evidence on oath and also called one witness for his defence. The learned Counsel for the prosecution and the defence informed the court that they do not wish to make any submissions. Hence, I now proceed to pronounce my ruling as follows.
3. The accused alleges that he was assaulted by DC Ilaitia when he was arrested in the early morning of 8th of August 2012. He was then taken to Nadi Police Station, where he was further assaulted. The accused stated that Cpl Shailend interviewed the accused on 8th of August 2012 for another incident of robbery. He assaulted the accused before the commencement of the said caution interview. Moreover, the accused alleged that he was slapped and threatened by Cpl Shailend before the commencement of his caution interview on the 9th of August 2012.
4. The prosecution denies the allegation of any assault and states that the accused was not assaulted at any time during the arrest or before the commencement of his caution interview on the 9th of August 2012.
5. The scope of the hearing of *voir dire* is extended only to the admissibility of the confessionary statement of the accused in evidence. The probative value of it still remains for the assessors during the trial proper. (G vs UK ( 9370/81, 35 DR 75)).
6. Justice Gounder in State v Akanisi Panapasa (Criminal Case No 34 of 2009) has outlined the general rule on admissibility of confession, where his lordship found that;

*“As a matter of general rule, a confession made by an accused person to a person in authority out of court is admissible only if the confession was made voluntarily. The rule which was developed by the English common law is the state of law in Fiji”.*

7. The principle of rejection of an improperly obtained confession is founded on three main principles, that;
  - i) Unreliability of the confession,
  - ii) Rights against self-incrimination,
  - iii) To prevent undesirable police conduct on the person in their custody,
8. Sections 13 and 14 of the Constitution of the Republic of Fiji Islands have recognised and endorsed the above mentioned three main principles.
9. The Privy Council in Wong Kam –Ming v The Queen (1982) A.C. 247 at 261 has discussed the basic control over admissibility of statement, where it was held that;

*“The basic control over admissibility of statement 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.”*

10. The Fiji Court of Appeal in Shiu Charan v R (F.C.A. Crim. App. 46/83) has discussed the applicable test of admissibility of caution interview of the accused person at the trial. The Fiji Court of Appeal in Shiu Charan (supra) held that;

*“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 the use of force, threats or prejudice or inducement by offer of some advantage - what has been picturesquely described as “the flattery of hope or the tyranny of fear.” Ibrahim v R (1914) AC 599. DPP v Pin Lin (1976) AC 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 Sang (1980) AC 402, 436 @ c - E.” (State v Rokotuiwai - [1996] FJHC 159; Hac0009r.95s (21 November 1996).*

11. The Fiji Court of Appeal in **Fraser v State ([2012] FJCA 91; AAU24.2010 (30 November 2012))** held that

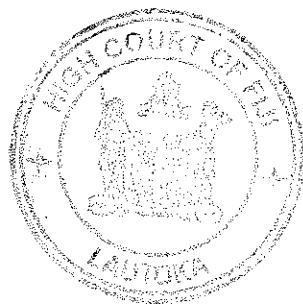
*“The court shall not allow a confession to be given in evidence against him unless the prosecution proves beyond reasonable doubt that the confession was not obtained (a) by oppression of the person who made it (b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in consequence thereof”*


12. The test enunciated in **Shiu Charan (supra)** and **Fraser (Supra)** constitutes two components. The first is the test of oppression. The court is required to satisfy that the statement in the caution interview had been taken without any form of force, threats, intimidation, or inducement by offer of any advantage. The second component is that, even though the court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation or inducement,

it is still required to satisfy that no any general grounds of unfairness existed before or during the recording of the caution interview.

13. It is the onus of the prosecution to prove beyond reasonable doubt that the caution interview of the accused was recorded voluntarily and under fair and just circumstance.
14. Cpl Ilaitia in his evidence denied that he assaulted the accused at the time of his arrest. He admitted that he had to put the accused down as he was not sure whether he was armed with a weapon. I.P. Maciu in his evidence stated that the accused appeared normal when he saw him at the Nadi Police Station in the morning of 8<sup>th</sup> of August 2012. According to the evidence given by DC Wayne, the accused was normal when he saw him at the scene of the arrest.
15. It is a rule of evidence that if one party is going to present a different version of events from the other, witness of the opposing party who are in a position to comment on that version should be given an opportunity to comment on them. (Browne v. Dunn [1893] 6R 67). If the party, who did not provide the opposing party an opportunity to comment on the version that he relies on, failed to provide any reasonable explanation for such failure, the court may make adverse inference about the credibility of the evidence adduced by the party in regard to the different version.
16. The accused did not put any of the prosecution witnesses about his allegation of assaults in details. Instead, the prosecution witnesses were generally asked whether they assaulted the accused, but did not specifically put to them the allegation in details.

17. Moreover, the accused claims in his evidence that he complained to the learned Magistrate about the assault and his injuries when he was first produced before the Magistrates court. However, the record of the proceedings of the Magistrates court does not support the claim of the accused. If he was injured as he claimed, the learned Magistrate would have noticed such and recorded his observation. In the absence of such, I do not find the evidence given by the accused is true and credible,
18. I find the evidence given by the prosecution witnesses is straight and forthright. I accept their evidence is true and credible. Accordingly I am satisfied that the accused was not assaulted and subjected to any unfair treatment during the arrest and before the commencement of the caution interview.
19. Having considered the reasons discussed above, it is my opinion that the prosecution has proven beyond reasonable doubt that the accused has given his caution interviews voluntarily and under fair and just circumstances. Hence, I hold that the caution interview of the accused is admissible in evidence.



  
R. D. R. Thushara Rajasinghe

Judge

**At Lautoka**

**24th of October 2016**

**Solicitors : Office of the Director of Public Prosecutions**  
**Messrs R Vananalagi & Associates**