

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 70 OF 2015

STATE

-v-

NAND KISHORE

Counsel: Ms. L. Latu for the State
Ms. K. Vulimainadave for the Accused

Date of Hearing: 17th and 18th July, 2017
Date of Ruling: 18th July, 2017

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the caution interview statement and the charge statement made by the Accused at the Ba Police Station.
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 to be ruled inadmissible in that they have been obtained unfairly and in breach of our client's rights under the Judges Rules.
 - ii. The confessions are to be ruled inadmissible as they were not recorded contemporaneously at the time of our client's interview and charge and that such confession[s] was obtained unfairly by way of trickery from the relevant police officers.
 - iii. Our client was not properly informed of his rights to a counsel nor was he well informed of his rights to engage a Legal Aid counsel at no costs on his part, there and then.
 - iv. Our client was not read over the record of his caution interview and charge thus breaching his rights under the Judges Rules.
 - v. Our client was not informed the reasons of his arrest at the time Police arrested him from his home.
 - vi. That there was a breach of his rights under the Judges Rules and Article 10 (1) and 14 (3) (g) of the International Covenant on Civil and Political Rights prior to and during his interview by the Police thus resulting in a grave injustice and prejudice to our client.
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 or trickery, 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.
6. Altogether 10 police officers were called by the Prosecution. I find their evidence is consistent and believable.

7. Crime officer Surendra Prasad had arrested the the Accused on 23rd of April 2015 around 6 a.m. at Accused's house at Veisaru. Detective Constable Shiu Raj had accompanied him.
8. He said that he informed the allegation against the Accused. He also said that he did not make any promises, threats, or trick the Accused. Accused cooperated with police and accompanied officers to clear the allegation.
9. Witness Naleshni Sharma, who was the Station Orderly at the Ba Police station on 23rd of April 2015, had not received any complaint from the Accused who had been in good condition when he was brought to the police station.
10. PC 3890 Ravi Kumar, in the presence of the witnessing officer Ashwin, interviewed the Accused at the crime office of the Ba Police station under caution. Interview was conducted in Hindi, the preferred language of the Accused.
11. Before the interview, PC Kumar had inquired from the Accused whether he can write and read Hindi. When Accused was asked why he wished to be interviewed in Hindi language, he had told that he can read and write Hindi and signed the record acknowledging that his right was explained.
12. Accused had admittedly received school education up to class six in a mixed linguistic environment. His mother tongue is Hindi. He had signed the record in English. Although he said that he did not take interest in education, it is unbelievable that he could not read or write Hindi.
13. Interviewing officer said that, since the Accused did not want to read the record, it was read back to the Accused. Witnessing officer confirmed this evidence. At question 4, when Accused was asked if he understood the allegation put to him, he had answered in the affirmative and signed the record. Record of interview shows that he had been afforded his right to counsel and right to consult a counsel from the Legal Aid Commission.
14. Wherever the Accused's signature was needed, interviewing officer had read the question and explained it to the Accused. Accused had signed the record acknowledging that his rights were afforded.

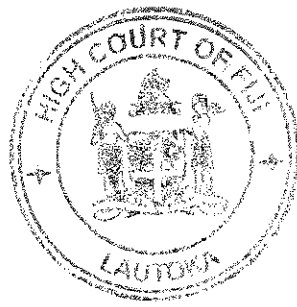
15. Witnessing officer Cpl. Ashwin Prakash had been present during the interview. He confirmed that the interview was recorded in Hindi and it was read back to the Accused in Hindi. Both PC Kumar and Cpl. Ashwin denied that Cpl. Ashwin was interviewing another suspect during the caution interview. Cpl. Ashwin said that he did take part in the scene reconstruction although his name was missing in the record. Cpl. Ashwin said that PC Kumar had forgotten to write his name. During cross examination of PC Kumar, Defence Counsel did not ask whether Ashwin did in fact take part in the reconstruction.
16. Accused in his evidence said that he informed the witnessing officer that he could not write and read Hindi. At the same time, he alleges that he was not given an opportunity to read the interview. If he had told that he could not read Hindi, police officers cannot be blamed for not giving him an opportunity to read the record.
17. Accused disputed the signature in the caution interview and also alleged that the caution interview had been fabricated by police officers. However, his Counsel did not cross examine the prosecution witnesses on the basis that the caution statement was fabricated and Accused's signature had been forged by police officers. He had never complained to anybody, even to his own Counsel that his signature has been forged. Accused said in Court that he did not notice the signature in the caution interview earlier. However, Accused admitted that the recording was done simultaneously with his interview and he signed some documents. Witnessing officer Ashwin confirmed that the Accused signed on each page before he counter-signed.
18. It appears that some of the answers contained Accused's personal information. He said that he gave his father's name, his level of education and the fact that he was doing carpentry work on the day in question. During the Caution Interview, interviewing officer had asked about his health and Accused had told that he was suffering from cancer. That shows that this information had been provided by the Accused. Accused had also denied the version of the Complainant that he had pulled her pants and the panty. If the police officers fabricated the interview, they could have omitted this denial.
19. Furthermore, the stance taken by the Accused in his *voir dire* grounds that he was tricked by police officers is in conflict with his allegation of fabrication.
20. During the charging, the charging officer DC Dhiresh had inquired from the Accused as to which language he wished to be interviewed and recorded. DC

Dhiresb said that Accused preferred Hindustani language and gave answers voluntarily to all questions. He said that Accused was not tricked, threatened or given any promise to answer the charge. Accused has signed the charge statement acknowledging that caution and his rights were given and he understood the charge. DC Dhiresb vehemently denied that he never charged the Accused on 23rd April, 2105 and the Accused was tricked to sign the charge statement.

21. Witnessing officer ADC Kamal Goundar confirmed that the charge statement was read back to the Accused in Hindi because Accused did not want to read it.
22. Accused admitted in his evidence that an officer sat with him for 3-4 hours and interviewed him in Hindi about the incident and recorded his answers. He also admitted that he signed papers wherever the police officer showed him to sign. He said that the police officer never asked him whether he could read Hindi. However, he told that he had informed the officer at the beginning that he could not write or read Hindi.
23. Accused said that he did not understand what the police officer had written on the papers. He admitted that he was served with disclosures and his Counsel from legal aid had explained the contents. His Counsel had represented him when he was first produced at the High Court. However, Accused or his Counsel had never complained to the judge that he did not understand the contents or that his signature had been forged.
24. Evidence of the Accused was completely unsatisfactory. Even though the burden of proof was on the Prosecution to prove that the Accused made the confession voluntarily and fairly, Accused failed to create any doubt in the Prosecution case.
25. There is no credible evidence that the interview was given as a result of assaults, threats, intimidation, trickery or inducement. There is also no evidence of unfairness, breach of Judge's Rules or constitutional rights in the interview or charging processes. I am satisfied that the Accused gave the confession voluntarily.

Conclusion

26. Prosecution proved beyond reasonable doubt that the Accused's interview and charge statement were obtained voluntarily and fairly. I hold caution interview statement and charge statement to be admissible in evidence.




Aruna Aluthge
JUDGE

At Lautoka
18th July, 2017

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