

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 59 OF 2013

STATE

v

1. RAHUL RAJAN NAIDU
2. AVENAI R. DANFORD

Counsel:	Mr Alvin Singh	for the State
	Mr Mark Anthony	for the 1st Accused
	Ms Keli Vulimainadave	for the 2nd Accused

Dates of Hearing: 7th, 8th and 9th of August, 2018

Date of Ruling: 10th August, 2018

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the cautioned statements of the accused produced at the Lautoka Police Station.

2. The test of admissibility of all admissions 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/ admission. Finally, where the rights of the suspects under the Constitution have been breached, this will lead to the exclusion of the confessions/ admissions obtained thereby unless the Prosecution can show that the suspect was not thereby prejudiced.

3. What I am required at this stage is to decide whether the interviews were conducted fairly and whether the accused gave the statements voluntarily. If I find that the admissions were obtained violating their constitutional rights, then I can in my discretion exclude the interviews.

4. 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.

5. The 1st accused filed *voir dire* grounds and challenged the admissibility of his caution interview on the basis that they were obtained using police brutality; under oppressive and unfair circumstances contrary to Judge's Rules. Reproduced below are the grounds of *voir dire* filed by the 1st Accused:

- I. That on or about 2nd August, 2011, he was picked up from Westpac Bank in Lautoka and taken to the Lautoka Police Station.
- II. That he was locked up in the cell at Lautoka Police Station until the arrival of the Cyber Crime Unit on or about the 3rd of August, 2011.
- III. That on the 3rd of August, 2011, prior to my caution interview being taken, the officers from the Cyber Crime Unit and other officers threatened and abused me and also forced me to admit to the offences committed.
- IV. That the officers then took him to the residence, searched his residence and asked for his business details. Furthermore the four officers assaulted him in the back seat of the van.
- V. That upon commencing the interview back in Lautoka Police Station, the accused was assaulted by the officers and forced to admit to the charges upon further threats made by the officers.
- VI. That his confession in the Caution Interview and the Charge Statement was obtained by torture, physical assault and threats of further violence and abuse by the officers involved in his arrest, detention, and recording of his Caution Interview and Charge.
- VII. That his confession in the Caution Interview and the Charge Statement had been obtained by coercion, torture, physical assault, and threats of further violence by the Interviewing Officers.

VIII. That his admission in the Caution Interview and Charge Statement had been obtained through oppression from the time of his arrest until he was produced in Court.

IX. That he was denied basic health care when he requested for it.

X. That he was denied the right to consult a lawyer prior to and at the time of the Caution Interview being taken.

XI. That there was breach of his rights under Section 11, 13 and 14 of the Constitution of Fiji, the Judges Rules and Article 9 (3) of the International Covenant on Civil and Political Rights prior to and during his interview by the Police.

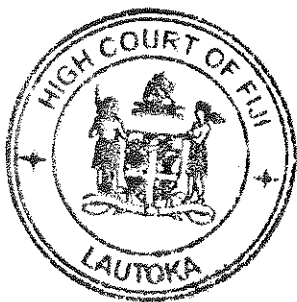
6. The 2nd Accused filed following *voir dire* grounds through his counsel.


I. The accused before his Caution Interview at Lautoka Police Station was put under duress by Police Officer Serupepeli Neiko who had pressured him as to where the money was as it was in his bank account. He was told if the money is not found he will go to Prison for years. As a result of being put under duress the accused was afraid hence cooperated during the Caution Interview.

- II. During the Caution Interview, Police Officer Serupepeli Neiko promised the accused if he admitted to the allegation nothing will happen to him and he will be released from Court.
7. Altogether, 4 police officers were called by the Prosecution to prove that respective caution interviews were conducted fairly following Judge's Rules and affording their rights and that the answers were given voluntarily.
8. They said that accused were never oppressed, assaulted or threatened while they were in police custody, during transportation or in the interview process. They also said that no promise or inducement was given to obtain answers and that the caution interviews were conducted in a fair manner following Judges' Rules and respecting rights guaranteed to an accused.
9. I find that the evidence of the police officers to be consistent and plausible.
10. The 1st accused said that he was assaulted during transportation and also when he was being interviewed. He also said that he was handcuffed behind and manhandled by police officers when he was being escorted to his house for a search. As a result of police assaults, he said that his face was swollen and suffering from severer chest pain. He further said that he was demanding a medical support but the police officers denied it.
11. There is no evidence that the 1st accused had complained to a senior officer or to the Magistrate about any of those ill treatments when he was first produced before the court. He admits in his evidence that he was released on 4th of August 2011 after the first two days of interview. Police officers had indicated to him that the investigation was not yet complete although he was released.

12. If he was assaulted and his answers were obtained against his will, he could have complained to senior officers after he was released. However he admits that no such complaint was lodged. The explanations given for his failure to make a complaint are not appealing to me.
13. The 1st accused admits that he did not see a doctor and sought medical treatments after he was released. According to his evidence, he had been insisting that he be referred to a medical examination. If he had a severe chest pain and a swollen face, he was expected to seek medical treatments soon after the release from police custody. However he had never gone to see a doctor.
14. There is no credible evidence that the answers of the 2nd accused had been given because of promises, inducements or threats. He had never complained to any authority after he was released from custody.
15. Upon perusal of the interview notes of each accused, I find that both of them have denied that they had any knowledge that the money they were dealing with was tainted or dirty. By doing that, they had denied one of the elements of the offence and basically advanced their defences. Therefore, it is not difficult to come to the conclusion that both accused had exercised their freedom to answer the questions according to their free will.
16. The Court is unable to accept the evidence of the 1st accused that he was assaulted, treated unfairly and that he had succumbed to intimidation to give the interview involuntarily. There is no credible evidence that the 2nd accused gave his interview under duress and/ or as a result of the promise that he will be released if he admitted the allegation. Evidence adduced by the Defence was inconsistent and implausible. I reject the evidence of the Defence. Evidence adduced for defence failed to create any doubt in the Prosecution's case.

17. There is clear evidence to satisfy myself that both accused had been cautioned properly and that they had been afforded their rights guaranteed to an accused in police custody. There is no acceptable evidence that they were assaulted, oppressed or treated unfairly. I am satisfied beyond reasonable doubt that the accused had made admissions voluntarily.
18. I hold that the caution interviews of the accused are admissible and can be led in evidence at the trial.




Aruna Aluthge
Judge

AT LAUTOKA

10th August, 2018

Counsel: Office of the Director of Public Prosecution for Prosecution
Mr. Mark Anthony for 1st Accused
Office of the Legal Aid Commission for 2nd Accused