

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 86 of 2017

BETWEEN : STATE

AND : MONISH NISCHAL PRASAD

Counsel : Mr Tuenuku for the State
Ms S. Khan for the Accused

Date of Hearing : 18 November 2019

Date of Ruling : 26 November 2019

RULING ON VOIR DIRE

1. The Accused is charged with one count of attempted murder contrary to Section 44(1) and Section 237 of the Crimes Act.

2. The Prosecution intends to submit the record of interview of the Accused conducted under caution and his answer to the charge given under caution. The Accused filed amended grounds of voir dire on 27 February 2018 challenging the admissibility of those documents. On 18 November 2019 the counsel for the Accused withdrew grounds 3 and 6 and the rest of the grounds are as follows;

- i. That his confessions were obtained involuntarily through pressure, duress and force by the police at Ba Police Station.
- ii. That the Accused was not informed promptly of his right to remain silent and the consequences of not remaining silent.
- iii. The Accused was threatened by the interviewing officer and the witnessing officer that if he refuse to sign he will be physically assaulted.
- iv. That the Accused was tired from the long days of questioning and due to the fear of being assaulted signed where the interviewing officer was pointing in the caution interview.
- v. The charging officer Mohammed Azad pointed to places in the charge statement and told the Accused to sign. The charging officer never explained the content of the charge statement to the Accused and he never gave a copy of the charge statement to the Accused to read before signing.
- vi. The Accused was threatened by the charging officer Mohammed Azad that if he refuse to sign he will be physically assaulted.
- vii. That the Accused due to fear of being assaulted signed at the places pointed by the charging officer DC 3896 Mohamed Azad.

3. The court has to now consider whether the caution interview and the charge statement are admissible in evidence. For this, the court has to consider whether those were made voluntarily or not, whether obtained without oppression or unfairness or not obtained in breach of the Accused's Constitutional rights.

4. In *Ganga Ram and Shiu Charan v. R* (Criminal appeal 46 of 1983 delivered on 13th July 1984), the Fiji Court of Appeal said thus;

“It will be remembered that there are two matters each of which requires consideration in this area. First it must be established affirmatively by the Crown (sic) 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. Ping Lin* [1976] AC 574.

Secondly, even if such voluntariness is established there is also a need to consider whether the more general ground of unfairness exists in the way in which police behaved, perhaps by breach of the Judges' rules falling short of overbearing will, by trickery or by unfair treatment. *R v. Sang* [1980] AC 402, 436 at C-E. This is a matter of overriding discretion and one cannot specifically categorise the matters which might be taken into account”.

5. Although the judges' rules are applicable to Fiji, it has been emphasized time and again that breaches of the Judges' rules do not necessarily make a caution interview inadmissible. It is pertinent to note the following paragraph from *State v Rokotuiwai - ruling on voir dire* [1996] FJHC 159; Hac0009r.95s (21 November 1996) at this juncture;

“I have no doubt whatsoever that these Rules do not have the force of law as has been made abundantly clear by the Court of Appeal in **R v PRAGER** (1972) 1 AER 1114 which is and should be followed in Fiji. The headnote reads:

"The Judges' Rules 1964 are not rules of law and their non-observance will not necessarily lead to a confession being excluded from evidence,

unless it is shown that the confession was not made voluntarily. Accordingly where it is alleged that a confession has been obtained in the course of questioning which was not introduced by a caution in accordance with r2b of the 1964 rules it is open to the trial judge to admit the confession on the basis that it was made voluntarily without ruling on the question whether it was obtained in breach of the rules (see p 1118 e and j to p 1119 a and p 1120 b, post).

In order to establish that a confession is not voluntary in that it was obtained by 'oppression', it must be shown that it was obtained in circumstances which tended to sap, and did sap, the free will of the suspect. 'Oppressive questioning' may be described as questioning which by its nature, duration or other attendant circumstances (including the fact of custody) excites hopes (such as the hope of release) or fears, or so affects the mind of the suspect that his will crumbles and he speaks when otherwise he would have remained silent (see p 1119 c to f, post)."

6. The prosecution called the interviewing officer, charging officer and the two witnessing officers. DC 3874 Suraj Ravi Raj gave evidence that he was the interviewing officer. He said that the Accused was cooperative and on 10 April 2017 he recorded the statement of the Accused on his computer. He stated that in question number 11 the Accused was explained the allegation and he was given the right to remain silent. Also, the witness confirmed that he explained the consequences of not remaining silent. The witness denied that the Accused was threatened or forced to sign the statement. He said that the Accused was given all the rights. The witness confirmed that the Accused was given the right to consult a Legal Aid Lawyer and at 1441 hours a Legal Aid Lawyer visited the Accused.
7. The main contention of the defence counsel during cross examination was that the Accused was not cautioned after the breaks that were given to him. The witness explained that the Accused was cautioned at the beginning of the

interview on the two consecutive days that he was interviewed. Further he said that the Accused was properly reminded that he is under caution.

8. Constable 3896 Mohammed Azad gave evidence that he is the charging officer. The witness confirmed that he gave all the rights to the Accused including the right to remain silent. He said that the Accused signed the charge statement to confirm that he understood the caution administered to him. The witness denied that the Accused was assaulted or threatened.
9. I have considered the evidence given by the Accused as well. He said that he was threatened during the interview and he was not given a chance to speak to a lawyer. However, he later said that he saw a Legal Aid lawyer in contrary to what he said initially. The Accused again said that he was given all the rights including the right to remain silent. But he said that he was told by the police officers that he has to answer the questions.
10. During cross examination the Accused admitted that a Legal Aid lawyer visited him at the police station. He admitted that the Legal Aid lawyer explained him all his rights. He further admitted that his family members were allowed to visit him, he was given sufficient breaks and meals. The Accused confirmed under cross examination that he was not assaulted by any police officer. He admitted that the answers recorded in the statement are his answers. However, he said that he was forced to answer some of the questions as he was told by the police officer that the answers cannot be left blank.
11. During re-examination the Accused said that he placed his signatures on his own freewill. But he said that not all the answers were given on his own free will.
12. The main issue that the court has to consider is whether the Accused was cautioned properly and whether there is any breach of Judges' rules or the provisions in the Constitution.

13. In *State v Ului - Voir Dire Ruling* [2018] FJHC 61; HAC52.2014 (22 January 2018) it was stated that the standard police caution, “you are not obliged to say anything unless you wish to do so but what you say maybe put into writing,” used in Fiji is in compliance with the Constitution and it well explains the right to remain silent and the consequences of remaining silent.

14. Endorsing the above observation in *State v Ului*, Justice Aluthge noted the following in *State v Niudamu* [2017] FJHC 137; HAC129.2015 (17 February 2017)

“In my opinion, the constitutional provision only articulates or describes the right to be safeguarded and, save as Section 13 (2) of the Constitution, it does not specifically provide for the manner in which those rights are to be afforded to a particular person.”

15. In the present case the prosecution adduced evidence that the Accused was given all his rights. The Accused too admitted that he was given his rights. I have considered whether he was explained the right to remain silent and the consequences of not remaining silent. I am of the view that the Accused is well explained the said rights by the standard police caution which was administered to him at the beginning of the interview on the two days.

16. I am satisfied that the prosecution proved beyond reasonable doubt that there was no pressure, duress or force exerted on the Accused to record the statement of the Accused. Further I am satisfied that the Accused signed the statement on his own freewill and he was given sufficient breaks and meals during the interview. The prosecution proved that the Accused was given the right to remain silent and he was sufficiently explained of the consequences of not remaining silent as well.

17. In the circumstances I decide that the Accused made the cautioned interview statement and the charge statement voluntarily. Accordingly, I hold that the cautioned interview and the charge statement are admissible in evidence.



Rangajeeva Wimalasena

Acting Judge



At Lautoka

26 November 2019

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Messrs Iqbal Khan & Associates