

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

**CRIMINAL CASE NO.: HAC 213 OF 2019**

**STATE**

**-v-**

**DAIVE LAL SINGH**

**Date of Hearing** : 3 February 2020  
**Date of Ruling** : 3 February 2020  
  
**Counsel** : Mr. S. Shiraz for Prosecution  
Accused unrepresented

**RULING ON VOIR DIRE**

1. The State seeks to adduce into evidence the caution interview of the accused recorded at the Nakasi 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 suspect 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. What I am required at this stage is to decide whether the interview was conducted fairly and whether the accused gave the statements voluntarily. If I find that the confession was obtained having violated his constitutional rights, then I can in my discretion exclude the interview.
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 accused was unrepresented right throughout the proceedings. He managed to file 'grounds' of *void dire* by way of a hand written document. The grounds (*in verbatim*) can be summarised as follows:

“On 8th December I was taken back into custody by PC Shaven Narayan. All my rights which I had in my first question (sic) interview were taken off when I ask my right from PC Narayan to call my wife namely Anjila Devi to be present in my question (sic) interview, then he assaulted me.

On my first question (sic) interview, there is no confession. Upon further investigation, I was not given my rights which were given on my first question (sic) interview. PC Shaven Narayan assaulted me and I was scared and confess I did the crime which I did not do”.

6. Generally, when the grounds of *void dire* are filed through a legal practitioner, the court's main focus will be on the specific grounds submitted. However, that may not be the case when the accused is unrepresented. The courts will not confine itself to its examination to the specific grounds, but the whole interview process will be thoroughly scrutinized against the said test of admissibility.

7. The only witness called by the Prosecution was the interviewing officer PC Narayan. He is the officer who conducted the interview at Nakasi Police Station. His evidence is not consistent and reliable. The State failed to call the witnessing officer and no valid reason was given for his absence in court. The absence of the witnessing officer's evidence denied to the court the opportunity to test the transparency of the interview process. I am not convinced that the interview was conducted fairly and that the accused voluntarily confessed to the alleged crimes. I give reasons as follows:
8. The interview had taken place over a period of approximately two months in phases and during that period the accused had been arrested and released several times. This police practice by its very nature is oppressive.
9. The first interview was conducted on 20<sup>th</sup> October 2018. According to PC Narayan, the accused was given his right to counsel and the right to have his family member present at the interview. There is no dispute that the witnessing officer Detective Constable Ame Raogo and accused's wife Anjila Devi had been present at the early stages of the interview.
10. It appears from the Record of Interview that the accused was very particular about the presence of his wife at the interview. This is clear from his answer to question 25 where he was asked if he wished to consult a lawyer or any other person to be present at the interview, his reply was: 'No, since my wife Anjila Devi is present'. However, the interviewing officer has obtained accused's signature to a statement that the accused did not want anyone to be present at the interview (at Q 26).
11. The first interview was suspended at 7.20 pm for the accused to have a rest. The accused looked tired. He was kept at the police station overnight. The interview had recommenced on the following day (21 October 2018) at 11 am. The accused had informed that he didn't wish to consult anyone, since his wife Anjila Devi was present. The interview had been suspended at 1.30 pm for the accused to have lunch, to conduct a search for the alleged stolen items and for further enquiry.

12. The search had been conducted at the accused's residence; and also at the workplace of the accused where the accused's wife was running a shop. PC Narayan had gone for the search with constable Josivini. However nothing has been recorded in the interview notes about the search conducted during the suspension. The officer admits that he failed to record that the accused was cautioned before the search was conducted. The time spent on the search and the time they returned to the police station to resume the interview is also not recorded. The interview had resumed at 5.5 pm. after the search and suspended at 5.35 pm. The suspect had been released thereafter because the 48 hour time limitation for custody was about to expire.
  
13. According to PC Narayan, the suspect was again taken into custody on the 7<sup>th</sup> December 2018, after a lapse of nearly two months, to resume the interview. Explaining the reason as to why there was such a big time gap in between the prior interview and the recommencement, PC Narayan said that they had to conduct further enquiry into the case as was instructed by his senior officer.
  
14. PC Narayan said that the suspect was not cautioned before the interview but he emphasised that the 'rights' were given. Having perused the record, the witness then said that the suspect was cautioned. He admitted that no one was present this time at the interview except the witnessing officer. His evidence is that the suspect waived his right to have somebody present at the interview. Explaining the reason why suspect's wife Anjila Devi was not present this time, PC Narayan said that on the first two occasions she was with the suspect at his residence, and on the 7<sup>th</sup> December 2018, the wife was away in the West.
  
15. I can accept accused's position that he had insisted on his wife's presence at the interview. In his engagement with the accused on previous interviews, PC Narayan should have known that the accused had wanted his wife to be present at the interview. He nevertheless proceeded to interview the accused. The evidence of PC Narayan as to what transpired at the interview was not supported by the witnessing officer.

16. When asked (by the court) if the suspect had made admissions in his previous interview, PC Narayan said that the suspect had denied the allegation and admitted only on the 7<sup>th</sup> December when he was shown a CCTV footage. Then he said that the CCTV footage was shown on 26<sup>th</sup> November 2018. It was for the first time that the witness revealed that the suspect was interviewed also on the 26 November 2018. The witness did not explain why the suspect was released if he admitted the allegation on the 26<sup>th</sup> September 2018.
17. Under cross examination by the accused, PC Narayan denied that the accused had wanted his wife to be present at the interview on the 7<sup>th</sup> December 2018 and that the accused was assaulted and threatened to press more charges if he kept on denying the allegation.
18. The evidence adduced by the Prosecution does not satisfy me that the interview was conducted fairly. Accused's right to have his wife being present at the interview was not respected and the accused was prejudiced thereby.
19. For these reasons I reject the evidence of the Prosecution. The Prosecution failed to prove beyond reasonable doubt that the interview was conducted fairly and the confession was made voluntarily.
20. I hold the record of caution interview of the accused to be inadmissible in evidence at the trial.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

**Aruna Aluthge**  
**Judge**

**At Suva**

**3 February 2020**

**Counsel :- Office of the Director of Public Prosecution for State**