

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 001 OF 2019

STATE

-v-

USAIA DELAI

Counsel : Ms. B. Kantharia for Prosecution
Ms. L. Manulevu for Defence

Date of Hearing : 27 January 2020

Date of Ruling : 27 January 2020

RULING ON VOIR DIRE

1. The State seeks to adduce into evidence the record of caution interview of the accused.
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 following grounds of *voir dire* were filed on behalf of the accused:
 1. The Accused Person was sworn at, punched on the chest, hit with a torch light on his knee, and slapped on the face by a group of civilian police officers including the officers mentioned in paragraph 2 immediately following his arrest.
 2. The Accused Person was punched on the chest, abdominal area and back, slapped on the hand and face and threatened to be assaulted to death by the following police officers during the caution interview and reconstruction of the crime scene:
 - i. Peter Voi,
 - ii. Isireli, and;
 - iii. Another officer whose name he does not know but this officer was with the two above.
 3. The Accused Person was denied medical attention as requested prior to and also after commencement of the caution interview.
 4. The Accused Person was denied by Peter Voi to be interviewed in the i-Taukei language as he opted the said language when he was informed of his choice of language to be interviewed in before the caution interview proper commenced.

5. The Accused Person was never given the option of consulting a legal aid lawyer of any other person.
 6. The Accused Person was threatened of assault, slapped on the face and at times punched in order for him to sign on the caution interview.
 7. The Accused Person was not given any meals during the time he was in custody.
 8. The Accused Person's request to be visited by his parents when his parents came to the police station was denied.
-
6. Prosecution called two witnesses, Sgt. Peter Voi and PC Isireli. Sgt. Peter Voi was the team leader of the arresting team that arrested the accused Usaia Delai on 28 December 2018. He also conducted the police interview of the accused. PC Isireli was the police officer who participated effected the arrest of accused. He also escorted the accused to the crime scene reconstruction in Wailoku.
 7. Both officers were based at Samabula Police Station. They conducted an early morning raid in Wailoku on 28 December 2018 to arrest the suspects in a series of break-ins. Two teams led by Detective Sgt. Peter Voi participated in the raid. Upon information received from the community, the arresting team raided the house of one Ruci in Wailoku where the two suspects were believed to be sleeping. The officers introduced themselves and informed the reason for the raid. Ruci went and woke the two suspects up. When the suspects came to the door, the officers introduced themselves and informed the reason for the arrest which the suspects understood. The suspects co-operated with the officers. PC Isireli cautioned and effected the arrest of Usaia Delai and escorted the suspect to the police vehicle and then to the Samabula Police Station. At the time of arrest or during transportation, Delai was not assaulted or threatened by any officer.
 8. At Samabula Police Station, Detective Sgt. Peter locked the co-accused in the cell, while Usaia Delai was detained in a room close to the Charge Room. This was done to ensure that no communication took place between the suspects.

9. Detective Sgt. Peter started questioning Usaia Delai regarding the allegation wherein information was received about the stolen items that were kept in Ruci's house at Wailoku. Delai agreed to direct them to the place where the stolen items were being kept. After 10 a.m. Delai was escorted to the house at Wailoku in a jeep. Delai took out the stolen items from the house. Sgt. Peter seized the items and recorded them in the search list. They made their way back to the Samabula Police Station and the suspect was detained in the same room.

10. Having completed the search for the stolen goods, they returned to Samabula Police Station after 11 am. Sgt. Peter started the interview at 2 pm in English, which was the preferred language for Delai. No witnessing officer or anybody else was present in the room. Delai was cautioned and his Constitutional Rights explained. Delai was not threatened, forced or given promises to make a confession. Delai was given a break of approximately one hour at 3.30 pm. and again at 5.25 pm. for him to rest. Delai was taken to Totogo Police Station as there was no separate room at Samabula Police Station for him to be detained. He was escorted back to Samabula Police Station the following morning (29th) and the interview resumed at 9.30 am. Delai was taken to Wailoku for a crime scene reconstruction by Sgt. Peter and PC Isireli. They returned to the station at 10.55 am to resume the interview at 11.05 am. However, Isireli did not take part in the interview because he was assigned to be the charging officer. The interview was concluded at 12.20 pm. on the 29th December 2018. At the conclusion of the interview, Delai signed the record of interview voluntarily.

11. The reconstruction of the crime scene took place at Wailoku during the suspension of the interview. PC Isireli escorted Delai to the scene reconstruction with Sgt Peter. During the transportation or at the scene reconstruction, Delai was not assaulted or forced to make a confession.

12. PC Isireli was also assigned to be the Charging Officer for Delai. Delai was physically fit when he was first received for charging. No visible injuries were seen on Delai. Delai did not at any time indicate that he wished to be seen by a doctor or that he was assaulted during the time of the interview.

13. Under cross-examination, Sgt. Peter and PC Isireli both denied that Sgt. Peter went inside Ruci's house to wake Delai up and that Delai was assaulted by Sgt. Peter with a torch. Officers also denied that they had failed to introduce themselves and to caution the suspect at the time of arrest. Both officers denied slapping, punching or swearing at Delai at the time of arrest, during transportation or at the Samabula Police Station. They also denied that Delai was punched, assaulted on his abdominal area, on his back and his face during breaks and transportation.
14. Police officers under cross examination did not deny that there is a discrepancy between the Samabula Police Station Diary entries and his evidence as to the exact time they had gone to Wailoku for the search. They admitted that, on 28th December 2018, Delai was escorted to Totogo Police Station for him to be locked in the cell. Police officers denied assaulting the suspect before he was taken to Totogo Police Station and when the suspect was being escorted back to the Samabula Police Station.

Analysis

15. The evidence of police officers is consistent and reliable. Witnesses for Prosecution corroborated each other in their respective testimony. There are no substantial contradictions between the station diary entries and the evidence. The inconsistencies highlighted by the Defence Counsel between the station diary entries and the evidence are not material enough for me to reject their evidence. And also, the inconsistencies have been satisfactorily explained by the witnesses.
16. There is no credible evidence that the accused was assaulted, threatened or forced to make a confession. If the accused was assaulted by two police officers in the manner suggested by the Defence Counsel, the accused should have received severe injuries. There is no evidence that the accused had visible injuries on his body at the beginning or after the interview. Until the grounds of *voir dire* were filed in Court, the accused had not complained to anybody that he was assaulted by police officers.

17. The officers failed to produce any document to prove that the search for stolen property was conducted as a result of an oral confession made by the accused. However, there is no evidence that the oral confession was forcibly extracted. The Prosecution is relying on the record of caution interview that was exhibited at the inquiry. In any event, if the Prosecution can show that the stolen items were recovered on the directions of the accused, that fact may be admissible in the trial.
18. The accused did not give evidence to support his claim that he was assaulted, threatened or forced to give a confession. That is his right. There is no burden for him to prove anything. However, his silence left the evidence of the Prosecution unchallenged.
19. I accept the evidence adduced by the Prosecution. There is no evidence that the police had extracted a confession by force. The Prosecution proved beyond a reasonable doubt that the caution interview was conducted fairly and by according to the accused his Constitutional Rights. I am satisfied that the accused had confessed to police voluntarily.
20. I hold that the caution interview of the accused is admissible in evidence at the trial proper.



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

Aruna Aluthge
Judge

At Suva

27 January 2020

Counsel :- Office of the Director of Public Prosecution for State
Legal Aid Commission for Defence