

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 106 OF 2019

STATE

-v-

ERONI VAQEWA

Counsel: Ms R. Uce with Mr R. Mohammed for Prosecution
Mr S. Nath for Defence

Dates of Hearing: 28, 29 June 2023
Date of Ruling: 29 June 2023

RULING ON VOIR DIRE

- 1 The prosecution seeks to adduce into evidence the record of caution interview and the charge statement of the accused at trial proper.
- 2 The test of admissibility of all confessional statements 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 a 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. The prosecution must prove these matters beyond a reasonable doubt. In this ruling, I have reminded myself of that.

5. The grounds filed by the accused are as follows:

1. That the accused only admitted to the offence after he was threatened that his wife will be incarcerated and charged should he not admit; that the arresting officers had also arrested his wife and brought her to the station as leverage over the accused should he not co-operate.
2. That the accused was assaulted by the police present at the station during the time of arrest till he admitted to the offence. He was punched in his ribs several times.

6. Prosecution called four police witnesses and a doctor at the *voir dire* inquiry. I summarise the evidence as follows:

PW 1: Inspector Sainivalati Nacolawai

7. In June 2019, Inspector Sainivalati (Sainivalati) was based at Trans-National Crime Unit at Nadi Airport. On 16 June 2019, he was detailed to continue with the investigation into the murder at Korovuto. In the morning, he received a call from one Eroni Vaqewa. Vaqewa said that he was waiting to be taken down to the police station with regard to the murder case under investigation.
8. Sainivalati drove to Vaqewa's address with DC Fabiano. He had already visited this address following up on the information into the alleged murder case. The alleged murder had taken place on 1 June 2019. Ten days of investigation revealed that Vaqewa was one of the people last seen with the deceased.
9. When they reached Vaqewa's house, Vaqewa was getting ready to accompany them back to the station. DC Fabiano cautioned Vaqewa and after giving rights to the suspect, Vaqewa was arrested and brought him down to Nadi Police Station. At the time of his arrest, or transportation, Vaqewa was not threatened, forced, assaulted or verbally abused. Vaqewa never made any complaint. At the Nadi Police Station, Vaqewa was handed over to the Crime

Office. He or Constable Fabiano never threatened that Vaqewa's wife would be charged and incarcerated if Vaqewa did not admit to the allegation. Vaqewa's wife had been interviewed into the alleged murder, as she was part of the drinking group with the deceased. Vaqewa's wife was not arrested on that particular day.

10. Under cross-examination by the Defence Counsel, Sainivalati said that Vaqewa wanted him to be picked up so that he could give some information to the police about the matter under investigation. Vaqewa said that he wanted to clear himself. He did not record in the station diary what he heard from Vaqewa. When he visited Vaqewa's house for the first time, Vaqewa was at his house. Prior to arriving at Lavusa on that particular day, he was aware that Vaqewa's wife was one of the witnesses and that her statement had already been recorded in the cause of this investigation. Sainivalati denied that he had used the information he had received from Vaqewa's wife as leverage to compel the accused to come to the police station to give evidence.
11. Vaqewa was handcuffed by DC Fabiano and was taken to the station. Vaqewa was seated at the back seat with DC Fabiano. He agreed that he has not stated specifically in his statement that DC Fabiano gave rights to the accused before the arrest. Sainivalati denied that Vaqewa was assaulted at the time when he was taken to the vehicle. He did not know who Vaqewa was handed over to because he was in the vehicle. He agreed stating in his statement that the accused was handed over to DC Akuila for interview. He agreed that the demeanour or status of the accused was not recorded anywhere.

PW 2 Detective Constable Fabiano

12. In June 2019, Fabiano was based at Nadi Police Station Criminal Investigation Department. On 16 June 2019, he received instructions from ASP Nagata to arrest a suspect. He left for Navosa in a fleet driven by Sainivalati and arrested the suspect Eroni Vaqewa at his house. Vaqewa called Corporal Sainivalati and informed him that he was ready to surrender himself. When they arrived at Vaqewa's house, Vaqewa was already prepared. He arrested Vaqewa informing the reason for the arrest. He gave rights and then escorted Vaqewa down to the Nadi Police station where he handed over the suspect to the interviewing officer Constable Akuila Maki. At the arrest, transportation or at the police station, Vaqewa was not threatened, forced, assaulted or verbally abused. Neither he nor Corporal Sainivalati threatened the

suspect that, if Vaqewa did not admit to the allegations, Vaqewa's wife would be incarcerated or charged for the allegations.

13. Under cross-examination, Fabiano said that he was awaiting instructions from SP Crime to arrest Vaqewa although, at the investigation, Vaqewa had already been identified as one of the suspects. Vaqewa's wife and all those who were drinking with the deceased were arrested and brought to the police station and cautioned and interviewed two days prior to Vaqewa's arrest. However, Vaqewa was not brought in to record his statement prior to the arrest.
14. Fabiano denied that he had used the fact that Vaqewa's wife was at the police station to compel Vaqewa to go to the police station on that particular day. He was seated in the front passenger seat while Vaqewa was seated alone in the back seat, handcuffed. He agreed that Vaqewa was willing to clear himself. He admitted stating in his statement that Vaqewa had informed him that he clearly understood all his rights and that he was willing to clear himself by telling the truth about what happened to Isikeli Rabuka. Vaqewa was aware that he was wanted for the alleged murder of Isikeli Rabuka. Vaqewa's wife Alena Bola was arrested on the 14th, two days prior to the arrest of the accused and was released after recording her statement.
15. Under re-examination, Fabiano said that when they went to arrest Vaqewa on 16 June 2019, they were not aware whether or not Vaqewa's wife was still in police custody.

PW 3 Sergeant Akuila Maki

16. In June 2019, Akuila was based at the Border Police Unit- CID at Nadi Airport. He was specifically tasked to conduct the interview of suspect Vaqewa at the Nadi Crime Office. Before the interview, he collected all the evidence that was available. PC Jesoni was with him in the interview room.
17. The interview was conducted in the iTaukei language. Constitutional rights were given to the suspect. Vaqewa appeared fit before and during the interview. Vaqewa made no complaints. Vaqewa gave the answers and signed the record of the interview. He himself translated the original iTaukei record into English. Both the original PE 1(A) and the English translation PE 1(B) were tendered in evidence.

18. The interview took place over two days. Vaqewa was never assaulted, intimidated or threatened before or during the interview. Enough food, breaks and time to rest were given. At 1525hrs, a break was given for Vaqewa to refresh himself and speak to his wife. After question 112, the interview was suspended at 1910 hrs. for day one. It was recommenced at 1040 hrs. on 17 June 2019 to be concluded at 1335 hrs.
19. Vaqewa's wife was arrested on 14 June 2019 and detained by the police and was later released after the commencement of the interview.
20. Under cross-examination, Aquila admitted that he did not check the health of Vaqewa but he appeared okay. He denied that before being interviewed, Vaqewa was assaulted by other officers outside the interview room. He did not ask if Vaqewa was fit or in good health before being interviewed. After the interview was conducted, Vaqewa was taken for a medical examination.
21. After the first day of the interview, Vaqewa was taken to Namaka Police Station. He denied that this movement was not recorded in the Nadi Police Station diary because the suspect was assaulted. When the interview was concluded at 1.35 pm on the 17th of June 2019, Vaqewa was handed over to the Charging Officer.

PW 4- Doctor Niranjan Prasad

22. Dr Prasad was based at the Nadi Hospital. On 17 June 2019, two murder suspects were presented for examination as the police needed a medical report before the suspect went into custody – just to see if they had any wounds or any injuries. He examined Eroni Vaqewa at 1810 hours and prepared a report (PE-2). The patient appeared to be calm. He could not find any bruises, marks, or injuries on Vaqewa's body. The police officer was present with Eroni Vaqewa at the time of the medical examination. The patient did not make any complaints to him.
23. Under Cross-Examination the doctor said that usually the history is taken from the patient. In this case, because the police officer was present with the patient, the history was taken from the Police officer. The police officer was present throughout the medical examination. He removed the t-shirt and pants to see if there were any bruises. There was no pain on palpation.

PW 5 Setareki Gavidi

24. On 17 June 2019, Gavidi received instruction to conduct the formal charging of Eroni Vaqewa. He conducted the charge in iTaukei at 17 hrs. in the presence of the witnessing officer, Constable Jitoko. Vaqewa was given his rights before the charge. After the charge was conducted the accused was taken for a medical examination. He tendered the charge statement in evidence [PE 3(A) and the English translation of which he did [PE 3(B)]. Vaqewa was very cooperative before charging. He received no complaints. It was concluded at 1700hrs on the same day.
25. He personally escorted Vaqewa to the Nadi Hospital to be medically examined by a doctor, who is an independent person to confirm if there were any fresh injuries present on the accused.
26. Under Cross-examination, Gavidi admitted that Vaqewa was kept at the police station for approximately three hours before charging and during that period Vaqewa had no opportunity to speak to an independent person like Justice of Peace. He spoke to the doctor and explained why the accused needed to be examined. He just escorted the accused to the doctor but he was never present in the room during the medical examination because he didn't want to interfere.

Case for Defence

Eroni Vaqewa (The Accused)

27. On 16 June 2019 Vaqewa was residing in Lavusa in Nadi. At around 9 am, two police officers arrived at his house and arrested him. Before they arrived, the police officers called him over the phone and asked him to wait at home, if not, his wife will be charged for this case. His wife who had been arrested had given his phone number to the police. He was handcuffed and taken to the police vehicle. He did not know the reason why he was being arrested. He believes that his wife was arrested on the 14th from her workplace. He was home at that time. While his wife was being detained at the police station he was arrested later.

28. After saying hello, police officers wanted him to accompany them to the police station; if not his wife will be charged but they did not tell what that case was about. When he was inside the vehicle, he was informed of the reason why they called me. They said that his wife has been arrested and detained by police and that if he did not accompany them, his wife will be charged. He was fearful because he was not aware of the reason why he was being arrested. In the vehicle, he was seated in the back seat with a police officer. He did not say anything about clearing himself on that particular day. He was taken to the Crime Office Fijian Bure at Nadi Police Station by Fabiano.
29. At the police station, prior to the interview, several police officers started beating him on his back, ribs and head asking him to be honest in giving his information, if not, he might be taken to Black Rock. He received injuries. The officers did not ask if he was fit to be interviewed. He understood the questions and signed the record of the interview. He just abided by whatever the officers told him. On 16 June 2019, he was not feeling well. At the end of the first session, he was taken to Namaka Police Station for a sleepover. He enquired about his wife. They assured him that his wife will be released because he had come to the station.
30. He was brought back to the Nadi Police Station on the 17th. He was still scared. The interview resumed at around 10 a.m. and the charging process started at 5 to 6 p.m. After being charged, he was taken to Nadi Hospital by Gavididi. During the medical examination, Gavididi was standing in front of him. He was not able to talk to the doctor himself during the medical examination which lasted for 10 minutes. The doctor placed a machine on his elbows but did not check him completely. He was taken to Sabeto Police Station for a sleepover. On the 16th and the 17th he was scared. He did not give his statement of his own free will.
31. Under cross-examination, Vaqewa said that he was not aware that he was arrested for a murder investigation. Between the 14th to the 16th, he was home but did not visit his wife at the police station because he did not know that she was taken by the police. Police called and informed that his wife was arrested but he did not ask the reason for her arrest. Before his arrest, he had given information to police that he had been drinking with Isikeli but he was not aware that the investigation was about Isikeli's death. He denied calling the police on the 16th. It was the police that called him. His rights were given at the time of the interview, not at the time of the arrest. He came to know Fabiano's name whilst he was being taken.

32. At the arrest, he was never assaulted by any police officer. His right to remain silent was given. When he was inside the vehicle, he was told to cooperate with police if he thought about his wife. Whilst he was being questioned, he came to know that his wife had been released. She was released at about 3 pm on the 16th. He admitted that he was not forced or threatened to give answers on the 17th. He did not sign on his own free will. He just signed to please the police officers.
33. If the police officer had gone out of the room he would have spoken to the doctor. He told the doctor that he had injuries on his ribs. The doctor was just poking as the police officer was standing nearby. He was afraid to tell the doctor about being assaulted by the police because the police officers were standing there. Upon being repeatedly questioned, he told the doctor that he was being assaulted by police.
34. He agreed that he never complained to the Magistrate or the High Court about being assaulted by the police officers. He was remanded for 2 years and 7 months. He was not aware that he could take action against the Fiji Police.

Analysis

35. The police officers who testified at the hearing said that the accused was never assaulted, threatened or forced to answer at the caution interview or during the charging process and that the accused gave the answers voluntarily. They also denied that they had used the fact that the accused's wife was at the police station to compel him to go to the police station. They also denied that he had used the information he had received from the accused's wife as leverage to compel the accused to come to the police station to make a confession.
36. The accused on the other hand said that he was assaulted and that he gave answers under pressure because his wife was arrested beforehand and detained at the police station for two days.
37. I am unable to accept that the accused had given his answers at the interview and the charge voluntarily. There is no dispute that the alleged murder incident happened on 1 June 2019 and that the accused was arrested on 16 June 2019. The police officers did not dispute that the wife of the accused was arrested on 14 June 2019 and detained at the police station for two

days as a suspect for the same incident and that her statement was recorded before the accused was arrested and brought to the Nadi Police Station to record his interview.

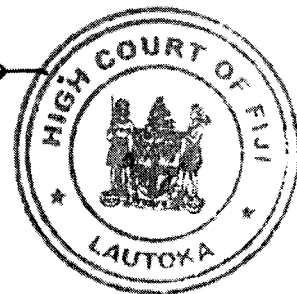
38. The evidence of arresting officers is that they received a call from the accused that he was ready to surrender himself to the police and that he was waiting at home for them to come and arrest him. It is hardly believable that the accused called the police officers and said that he was ready to be arrested.
39. Sainivalati said that the accused's wife was interviewed for the alleged murder, as she was part of the drinking group with the deceased but the accused was not arrested on that particular day. He further said that the accused wanted to clear himself in the telephone conversation before the arrest.
40. Fabiano also agreed that the accused was willing to clear himself. He confirmed that the wife of the accused was arrested on 14th June 2019, two days prior to the arrest of the accused and was released after recording her statement. Fabiano further agreed that the accused's wife and all those who were drinking with the deceased except the accused were arrested and brought to the police station and caution interviewed two days prior to the accused's arrest.
41. The accused said he was arrested after his wife and that he was under pressure to give answers at the interview. He said he signed the record to please the officers. He denies that he gave a confession voluntarily.
42. The main ground of challenge was that the police officers had used the information they had received from the accused's wife as leverage to compel the accused to come to the police station for the interview to obtain a confession. According to the police evidence, the accused has volunteered to come to the police station to 'clear himself'. If the accused wanted to clear himself, how probable it is for him to make a confession to the police officers admitting to a murder? I doubt that the accused came to the police station voluntarily. He was compelled to come because his wife had been arrested and was to be charged.
43. I don't believe that the accused was in a proper state of mind to make a voluntary statement when he knew that his wife had been arrested and detained for two days by the police. It is

also possible that the statement given by the accused's wife was used by the officers to compel the accused to make a confession or perhaps to trick him.

44. The accused had been taken to the doctor at the charge and not at the beginning of the interview. According to Gavid, he escorted the accused to the hospital to be examined by a doctor, who he considered to be an independent person to confirm if there were any fresh injuries present on the accused. He is the one who spoke to the doctor and explained why the accused needed to be examined. He further said that he just escorted the accused to the doctor but he was never present in the room during the medical examination.
45. Doctor Prasad, an independent witness, confirmed that the police officer was present with the accused throughout the medical examination. He further said that because the police officer was present with the patient, the history was taken from the police officer although the history is usually taken from the patient. He confirmed that the patient did not make any complaints to him.
46. Doctor Prasad contradicted Gavid's evidence that he (Gavid) was never present in the room during the medical examination. If Gavid genuinely expected an independent assessment from the doctor, he should have kept away from the accused and allowed the accused to talk to the doctor privately and give the history.
47. Although the doctor said that he did not see any injuries on the accused, the conduct of the police officers raises a reasonable doubt about whether the accused was never assaulted.
48. The Prosecution failed to prove beyond a reasonable doubt that the accused gave the answers voluntarily at the interview and the charge. I hold that the caution interview and the charge statement of the accused are inadmissible at the trial proper.



Aruna Aluthge
Judge



29 June 2023
At Lautoka

Counsel:

Office of the Director of Public Prosecution for State

Mr. Nath Lawyers for Defence