

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 348 of 2009

STATE

v

LEPANI LEA TAGICAKIBAU

For the Prosecution : **CPL Monish**
For the Accused : **In Person**

Ruling : **25 August 2017**

RULING

VOIR DIRE

1. The accused, Lepani Lea Tagicakibau is challenging the admissibility of his caution interview statement recorded by the police on 1 September 2009. The voir dire grounds were filed on 21 April 2015, by the Legal Aid Commission and the grounds as I paraphrased are; -
 - a. *That he was threatened by Police Officer DC 3213 Keni, PC 3490 Aisea, and another itaukei Police Officer, that if he does not admit they will assault him and thus his admission and confession were obtain by pressure and duress.*
 - b. *His admission was obtained by force as he was assaulted by DC 3212 Keni, PC 3490 Aisea, and three other itaukei Police Officers.*

- c. *He was oppressed and being forced to admit to the allegation.*
- d. *That there was a breach of his rights under the Judges Rules and Article 9(2), Article 10(1) and Article 14(3)(g) of the International Convention on Civil and Political Rights.*
- e. *That there has been a breach of his Constitutional rights under section 13(d) and 14(2)(k) of the Constitution of the Republic of Fiji 2013.*

2. On 31 August 2015, Mr Fesaitu of the Legal Aid Commission make an application to withdraw as counsel as the accused has withdrawn his instruction from them. The application was granted by the court. The accused informed the court that he has engaged Mr Lomaloma as his counsel. Mr Fesaitu informed the court that full disclosures including the voir dire statement has been returned to the accused. That was confirmed by the accused.

3. On 30 October 2015, the accused waived his rights to counsel. The case was set for voir dire hearing on 26 January 2016.

4. At the hearing, the Prosecution called two witnesses. The Accused was the only witness for the Defence.

5. The law in this area was settled by the Fiji Court of Appeal in **Ganga Ram and Shiu Charan v R** (unreported) Criminal Appeal No. 46 of 1983, where it was stated at page 8:-

".....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 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 of 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 (1941) AC 599: DPP v Ping Lin (1976) AC 574. Secondly, even if such voluntaries is established there is also need to consider whether the more general ground of unfairness exists in the way in which police behaved, perhaps by breach of Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. R v

Sanag (1980) AC 402 436CE. This is a matter of overriding discretion and one cannot specifically categorise the matters which might be taken into account.....".

The onus is on the Prosecution to prove beyond reasonable doubt that the confession or admission made by the accused was voluntary, and was made without threats, inducement, promise, or oppression. The Prosecution must also prove that the accused was given his rights and if his rights were breached, the accused was not prejudiced by the breach.

PW1 – CPL 3213 Keni. He is the interviewing officer who interviewed Lepani by pointing to the accused at the dock. During the interview Constable Aisea was present. The accused was given his rights to counsel and his constitutional rights. The accused was given time to rest, have his meal. There was no force, promise, or threat used to obtain the accused confession and admission. The allegation is false. He did not assault or use any force to the accused during the interview.

PW2 – PC 3490 Aisea. He is the witnessing officer in the interview of Lepani by pointing to the accused at the dock. He denies the allegation. The accused was given his rights to counsel and constitutional rights. The accused was given enough time to rest and meals were served to the accused. He did not see PW1 assaulting the accused. There was no force. He did not use force, or make any promise or inducement or threat to the accused at any time. He confirmed that he was present during the interview when the Accused put to him that he was not present during the interview.

The Accused in his evidence stated that before the interview they took him to the double story at the Labasa Police Station where they forced him to admit to what happened in 2004. He was told to admit to the allegation and they forced him to admit that he did the allegation at his workplace at Naduna. They told him that they have a machine that can be placed on his head to detect what in his mind to confirm what he did. He told them to put on the machine. PW1 stood up and punch him on his right and left hand and he went down on the top of the desk.

They were forcing him and Officer Bale came and told them that what they did is wrong.

In cross examination, he confirms that Aisea was present and sitting beside him and he was interviewed by Keni. Keni punched his face on his left and right hand. He does not know who assaulted him when he was lying down. He was in pain and there was a cut above his left eye injured when he was hit on the table. They did not take him to hospital. He was produce in court on the next day after the interview where injury was still fresh and he informed the court that he was assaulted. There was no direction from the court to the police for him to be taken for medical examination. He said that PW2 did not punch him and confirmed that only Kini punched him.

Both the prosecution witness who are the two officers named in the voir dire ground deny the allegation and label the allegation as false. That is supported by the inconsistency of the allegation in the voir dire grounds filed by the defence and the evidence of the accused.

The Accused confirmed in his evidence that he was only punched by PW1 and not by PW2. His evidence that he reported the injury to the court when he was first produce in court is not supported by the court record. The Accused in cross examination confirmed that PW2 was present in the interview but when he was cross examining PW2, he told PW2 that he was not present during the interview.

In assessing the credibility of the witnesses, I find that the witnesses of the Prosecution are more credible than the Accused. I therefore accept the evidence of the Prosecution and reject the allegation made by the Accused on inconsistency as discussed in paragraph 12 above. The inconsistency affects the credibility of the Accused as a witness and create doubts on the truth of his allegations.

14. In assessing the evidence, I find that the Prosecution had discharge the onus in this case and has proved that the accused admission in this caution interview were made voluntarily. The Accused was not prejudice in any ways.
15. In my ruling, I find that the Accused caution interview is admissible and can be led as evidence at the trial.



C. M. Tuberi
RESIDENT MAGISTRATE