

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 740 of 2011*

**STATE**

v

**SHIVNESH LAL**

For the Prosecution : **PC Nilesh**  
For the Accused : **Ms Dunn. S**  
Ruling : **27 June 2017**

**RULING**

**VOIR DIRE**

1. The accused, Shivnesh Lal is challenging the admissibility of his caution interview statement recorded by the police on 22 December 2011. The voir dire grounds were filed on 8 July 2014, and the grounds are; -
  - a. That the juvenile was assaulted and told to do sit-up by PC Seru and PC 3388 Ivin when he arrived at the Labasa Police Station on the early hours of 22/12/11. No one at the station did anything whilst the Accused was being assaulted or told to do sit up.
  - b. That the juvenile was interviewed under caution at 6.30am despite being injured and tired as he was kept up all through the early morning. He was in no

condition or whatsoever to give a proper interview as not only was he assaulted and tired, he was also not given breakfast. The juvenile was too scared to even request for his brother to be present at the interview. The Police did not even take the juvenile for medical.

c. 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.

d. 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. The voir dire disclosures were served and the case was set for hearing on 26 January 2016.

3. At the hearing, the Prosecution called three witnesses. The accused was the only witness for the Defence.

4. 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.....".*

5. 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.

6. PW1 – PC 3338 Ivin, stated that he is with the Fiji Police Force for 12 years. He arrested the accused from the Vunivau bus shelter at 1.20am on 22 December 2011. They arrived at the Police Station at 1.25am where the accused admitted stealing the goat and he handed over the accused to the Station Orderly. He read the cell entry for 22 December 2011, where it says “Nil physical injury” on the accused. He deny the allegation, and confirmed that he did not assault the accused or make the accused do sit up.
7. PW2 – Topaz Khan, she interviewed the accused from 6.30am to 7.20am. The accused had 3 hours of sleep. The accused was a juvenile and he requested for a Social Welfare Officer to be present in the interview. She stated that the breakfast at the Police Station normally served between 7am to 8am and the accused was served with the breakfast.
8. PW3 – Vasemaca, a Social Welfare Officer Class One who looks at the child welfare service for 18 years and below. She recalled that on 22 December 2011, she was called in to witness the interview of the juvenile Shivnesh Lal. When she arrived, the juvenile was sitting with the investigating officer. She was introduced to the juvenile. She recalled there was no assault during the interview and the accused was normal, well, and good and did not make any complain. She stated that at all the time, the child is protected. She confirmed that breakfast was served to the accused after the interview.
9. The accused is the only witness for the Defence. In his evidence, he stated that he was arrested between 11pm and 12pm at night by Ivin and Seru. He was assaulted in the van that brought him to the station. Ivin wanted to hit him with his leg and on his chest. Ivin told him to do sit up and they did that for about 2 to 3 hours. After that he felt hungry and they were taken for the interview. During the interview, he was hungry and his whole body was paining. He was interviewed together with Nitin, and he gave the same answer given by Nitin. In



cross examination, he stated that he was not forced to give the answer and the answer was given on his own free will. He was not under duress. He asked for the Social Welfare Officer to be present in the interview. He did not speak to the Social Welfare Officer and as soon as the Social Welfare Officer arrived the interview started. He was punched hard and slapped on the stomach plenty times. He was 15 years old at that time. He was complaining about the assault on that night but not sure if it was heard by the Social Welfare Officer and the Interviewing Officer as they were not taking any action. He did not make any complain at the Police Station. He did not complain to the court as that was his first time in court and he was afraid. He complained to his mum and brother when he returned home from court. He did not go to the hospital for medical check up.

10. The evidence of the Prosecution had established that there was no assault made to the accused and he was not told to do sit up. The accused had three hours of sleep before the interview. There was no injury on the accused and he was normal, well and good during the interview. The accused was protected all the time. The Accused himself in his cross examination confirmed that he gave his answers on his own free will and he was not threatened or under duress. The admission by the accused shows that the answers in the caution interview were made voluntarily.
11. The allegation of assault at the Labasa Police Station is inconsistent to the accused evidence that he was assaulted in the van before he was taken to the Police Station. I reject this allegation. On the allegation of doing sit up, I accept PW1's evidence that he hand over the accused to the Station Orderly. The accused arrived at the Police Station at 1.25am and interviewed at 6.30am. That is more than 3 hours, the time alleged to be doing sit up. I therefore reject the allegation of doing sit up, tired, and injury during the interview.
12. I accept the Prosecution evidence that breakfast was served to the accused after the interview as interview concluded within the breakfast time at the station. I reject the allegation of scared to request for his brother when he had the courage to request for Social Welfare Officer to be present in the interview.

13. In assessing the credibility of 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. The inconsistency affects the accused credibility as a witness and create doubts on the truth on his allegations. I find that there is no need for PC Seru to take stand and give evidence as the allegation is not true.
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 as admitted by the Accused. 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.

**28 days to appeal**



C. M. Tuberi  
RESIDENT MAGISTRATE