

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 321 of 2016

DPP

v

GABRIEL BULI

Counsel : **Mrs Vavadakua. A** for the Prosecution
Mr Tuicolo. V for the Accused

Ruling : **5 July 2019**

RULING

Voir Dire

1. The Accused, filed his voir dire grounds challenging his admission in his caution interview.
2. The Accused stated that his confession in the caution interview was not given voluntary on the following reasons;-
 - a. *DC 3490 Aisea, the interviewing officer, threatened him to admit to the allegation and also threatened him at the time of the reconstruction of scene. The same officer fabricated the Accused statement and failed to record the answer properly.*

- b. *Police Officer Gyan and other officers assaulted him and threatened him before the interview. Gyan assaulted him with the baton and strangled his neck, hit his arm with the baton and told him that he will die and for him to admit to the allegation.*
- c. *DC 3032 Bull threatened him at the reconstruction of the scene by telling him in aggressive tone that if he was caught at the time of the alleged incident, he would be badly assaulted and thrown into the drain.*
3. The hearing was conducted on 9 May 2018. The Prosecution called DC 3506 Asish Kumar the arresting officer as the first witness, DC 3490 Aisea the interviewing officer as the second witness, DC 3032 Bull as the third witness, Sgt 3138 Gyan as the fourth witness, DC 3214 Timothy the investigating officer as the fifth and final witness. The Accused is the only witness for his case.

Law

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;-
- "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,*
- Secondly, even if such voluntariness 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 the Judges Rules falling short of over bearing the will, by trickery or by unfair treatment."*

5. In the case of the **State v Rajendra Gounder**, *Criminal Case No.HAC 99 of 2014 (16 January 2015)*, *De Silva. J*, at paragraph 2, stated;-

"Finally, where the rights of the suspect under section 13 and 14 of the Constitution have been breached, thus will lead to the exclusion of the confession obtained thereby unless the prosecution can show that the suspect was not thereby prejudiced."

6. 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 prejudice by the breach.

Analysis and determination

7. The record of the interview and the translation were tendered as prosecution exhibit 1. The Accused was identified in court by the prosecution witnesses as he is a known person to the police.
8. The Accused stated in his evidence that he was assaulted by Gyan and the rest of the officers only threatened him. All his rights were given to him. The evidence he gave to the police was voluntary. This evidence of the Accused contradicts with his voir dire grounds. That shows that the Accused answers for the caution interview were given voluntary despite the alleged assault and threats from the police officers. The Accused challenge was on some of his answers were change, fabricated and incorrectly recorded by DC Aisea.

9. DC Aisea stated that what he recorded in the caution interview are true reflection of what the Accused told him. He deny the allegations of the Accused. He stated that the Accused had read and signed the record of the interview. The Accused stated that answers to questions 20, 31, 32, and 33 were fabricated. He did not give those answers. DC Aisea stated that the interview was witnessed by police officer Filomena.
10. The witnessing officer Filomena was not call to the stand. She would be a material witness for the Prosecution case on the issue of contention between DC Aisea and the Accused.
11. DC Aisea stated that the Accused was uncomfortable during the interview due to the injuries. The proper procedure requires all that happened during the interview to be recorded. He gave the Accused all his rights but he did not record that he informed the Accused of his rights to remain silent. The Accused was not caution before the reconstruction of scene. At the scene, the Accused was asked to show the scene and that was incriminating on the Accused. These evidence of DC Aisea shows that he was not following the proper proceedings in handling the Accused as a suspect.
12. In assessing the credibility of DC Aisea and the Accused, I find the Accused as credible witness. The Accused was saying what he had gone through when he was in the police custody. The evidence of DC Aisea shows his ignorance of the proper and standard procedure. With such evidence of ignorance, I believe the Accused evidence that DC Aisea fabricated some of the answers given by the Accused during the caution interview. As such the caution interview is prejudicial against the Accused.

13. In assessing the evidence, I find the Prosecution was not able to discharge the burden of proof required.
14. I ruled that the Accused caution interview is inadmissible and cannot be led as evidence on the trial date.

28 days to appeal



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", is written over a horizontal line.

C. M. Tuberi
RESIDENT MAGISTRATE