

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 236 of 2014

STATE

v

NILESH CHANDRA

Appearance : **CPL Prasad** for the prosecution
Accused in person

Ruling : **17 February 2020**

RULING

Voir Dire

1. The Accused, is challenging the admissibility of his caution interview as evidence for the this case.
2. The Accused stated in his voir dire grounds that;-
 - a. *he was punched and slapped when he arrived at the police station.*
 - b. *he was threatened when in the police custody so he gave false statement.*
 - c. *he was in police custody for 47 days.*
3. The case was heard on 9 December 2019. The Prosecutor called two witnesses. 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. 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. DC 3191 Neori (Neori) is first witness for the prosecution case. He is the interviewing officer and he interviewed the accused on 25 March 2014. During the interview, Neori said that the accused was not assaulted or threatened. The accused answers were given on his own free will. Neori said that police can only keep a person for 48 hours. They only kept the accused for 2 days in Seaqqa, after that, the accused was brought to Labasa. He said, the accused was not detained for 47 days.
8. Neori stated that the record of the interview was given to the accused to read. The accused never change or amend the record of the interview. He said that the accused gave his answers on his own free will.
9. DC 3389 Elia is the second witness for the prosecution case and the charging officer. He said that the accused never informed him that he was assaulted or threatened. He denied that the accused was detained for 47 days.
10. The Accused testified that on 25 March 2014, he was taken to Seaqqa Police station from Labasa Police station. He said that he was charged on the same day. He was brought back to Labasa and kept there until he was produce to court. He was produce in court on 12 May 2014, and that was after 47 days. The accused further stated that he was bailed from other cases when he was produce for this case. He said that he was to be remanded in custody but he was taken to the police station and remanded there.
11. The accused did not mention in his evidence that he was assaulted or threatened by the police. Prosecution witnesses

deny any form of assault and threat. As such, the allegation of assault and threat was not supported by evidence. Therefore, I accept the evidence of the prosecution that there was no assault and threat made to the accused.

12. In assessing the evidence, I find that the admission made by the accused in his caution interview was voluntary.

13. The accused alleged that he was in police custody for 47 days. That from 25 March 2014 to 12 May 2014 which is the day he was produce in court. In his evidence the accused stated that he was in remand for other cases when bailed from those other cases he was produce in court for this case. The accused cannot count those days that he was ordered to be in remand for other cases as that was a lawful ordered by the court for him to be in remand. Neori said that the accused was only kept for 2 days at Seaqaqa Police station and not for 47 days.

14. In assessing the rights of the accused and if there was any unfairness, I find that the evidence shows that the rights of the accused was not breached. As such there is no unfairness shown.

15. With the above assessment, I find that the prosecution has discharge the burden of proof required.

16. Therefore, I rule that the Accused caution interview is admissible and can be led as evidence during the trial.

28 days to appeal



C. M. Tuberi

RESIDENT MAGISTRATE

