

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 174 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 his admission in his caution interview.
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 in the police custody for more than 15 days with one pair of clothes.*

c. Satish Chand told him to plead guilty and they will release him from the police station.

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.

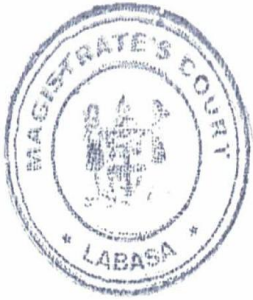
Analysis and determination

7. During cross-examination, the accused stated that during the interview, the statement he gave was of his own free will. That admission has settled the voluntariness of the accused admission in his caution interview.
8. I now consider the second limb relating to the accused rights and if there is any unfairness.
9. The accused testified that he was arrested on 23 March 2014. On his arrival at the Labasa Police station, he was punched by the police officers and he do not know their names. He said that some of them are still in the police station like Fred Bull, Aisea, and the others he only knew them by face.
10. During the interview, he said that, he said whatever Satish told him to say. He disputed his signature in the caution interview.
11. The accused said that he was in the police custody for 14 days. In his *voir dire* ground he said that he was in the police custody for 15 days. The accused testified that he was arrested on 23 March 2014. According to the court record, the accused was produce on 2 April 2014. That means, the accused was in police custody for 10 nights. During that period, he only have a pair of clothes and his properties were missing. The police were not allowing his visitors to see him. The accused said that he make a report to the police but he do not have the report number. He made follow up but nothing was done to his complaint.

12. Satish Chand (Satish), the interviewing officer is the first witness for the prosecution case. He interviewed the accused on 1 April 2014. That would be after 9 nights in the police custody. He confirmed that the accused had informed him that he was assaulted and his properties were missing. The accused also informed him that during the time he was in the police custody he was wearing only a pair of clothes. That support the accused allegation that he was assaulted by the police, his missing properties and in police custody with one pair of clothes.
13. Satish testified that all the rights of the accused were given to the accused. That is not enough and the caution interview must be tendered to confirm that the accused were given his rights before and during the interview. Unfortunately, the record of interview was not tendered and that create doubt or whether the accused rights under *section 13* of the *Constitution* was given to the accused or otherwise.
14. The evidence adduced has confirmed that the accused rights were violated when he was kept in police custody for 10 nights with a pair of clothes before he was produce in court. That also breach the accused constitutional rights under *section 13* of the *Constitution*. That shows how the accused was unfairly treated in this case.
15. The onus is on the prosecution to prove beyond reasonable doubt that accused will not be prejudice by those breaches of the accused rights.
16. There was no evidence from the prosecution that the accused will not be prejudice by the breaches of his rights. As such, the Prosecutor fail to discharge the burden required.

17. I therefore, ruled that the Accused caution interview is inadmissible and cannot be led as evidence during the trial.

28 days to appeal



A handwritten signature in blue ink, appearing to read "K. Tuberi" or similar, written in a cursive style.

C. M. Tuberi

RESIDENT MAGISTRATE