

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

*Criminal Case No. 181 of 2016*

**STATE**

v

**MOHAMMED WASEEM TAKI**

Appearance : **WSGT Mere** for the prosecution  
**Mr Raramasi. S** for the accused

Ruling : **13 March 2020**

**RULING**

*Voir Dire*

1. The Accused, is challenging the admissibility of his caution interview as evidence for this case.
2. The Accused stated in his *voir dire* grounds filed on 6 December 2016 that;-
  - a. *one police officer smacked his leg with a stick when the police were searching his house and he fell down on the ground and got dirty.*
  - b. *the police officers assaulted him and intimidating him by hitting his head, hands, yelled at him, and grabbed him when they arrested him on 25 March 2016.*

- c. at the police bure in Namara, DPC Shiri Bhawan threatened him and said that someone should spear him.
  - d. he was insulted by the police when they questioning him on 26 March 2016.
  - e. he was kept in police custody for 3 days which exceed the 24 hours requirement.
3. The case was heard on 10 February 2020. The Prosecutor called three 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 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**

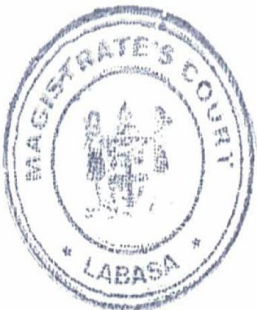
7. PC 5303 Padayachi is the second witness for the prosecution case. He identified the accused in court and said that the accused was arrested inside his house but he cannot recall the officer that arrested the accused. He testified that the accused was not assaulted during the time of arrest and he denied that the accused was assaulted.
8. DC 5089 Vikash Naicker is the third witness for the prosecution case. He is the investigating officer and the interviewing officer. He interviewed the accused on 25 March 2016. He testified that all the constitutional rights of the accused was given to the accused and the accused was given time for breaks and meals. PC Akash was with him during the interview. He said that he knows nothing about the assault and he agree that the accused was in the police custody for 3 days. When the accused came for the interview the accused did not make any complaint to him.
9. Inspector Vidya is the first witness for the prosecution case. His evidence is not material or relevant to the allegation raised by the accused.
10. The accused testified that the police came and search his house on 25 March. The police officers were very rough on him and also threatened him. When PC Padayachi hit his leg and kicked him, it was painful and he fell down. At the police bure DPC Shiri told him that he will spear him and he

was so scared. The police officer told him to plead guilty and they will release him in the afternoon. He was kept in the police station for about 3 days. He was so frightened and he could not say anything as that was his first time in the police station. He said that he was not cautioned when the police arrested him.

11. The evidence of the accused has some consistency with his *voir dire* grounds filed.
12. The allegation against PC Padayachi was denied by PC Padayachi.
13. The allegation of threat against DPC Shiri was not address by the prosecution evidence as Shiri was not call to the stand on reason only known to the prosecution.
14. DC Vikash stated that all constitutional rights of the accused were given to the accused and he knows nothing about the assault. He did not deny or agree to the allegation of insult raised by the accused during the time of questioning. The credibility of DC Vikash is questionable when he stated that the accused was given time for break and meals during the interview but that was not stated in the record of the interview.
15. The arresting officer was not call to the stand to address the allegation of assault and intimidation at the time of the arrest.
16. In assessing the evidence adduce by the prosecution, some of the allegation raised by the accused were not address. The accused stated that as a result of what he goes through with the police, his admission was not voluntarily. As such, the Prosecutor was not able to establish beyond reasonable doubt that the accused admission was voluntarily.

17. The accused was kept in police custody for about 3 days and that breached the accused constitutional rights. The evidence of the prosecution provides a reasonable explanation to the breach, as it was during the Easter weekend when the accused was arrested on Easter Friday and produce on a special sitting on Easter Monday. Though the accused rights was breached but accused was not prejudice as it was during the Easter weekend when no court was sitting.
18. In assessing the evidence, I find that the prosecution has not discharge the burden of proof required.
19. I therefore, rule that the accused caution interview is inadmissible and cannot be led as evidence during the trial.

**28 days to appeal**



C. M. Tuberi

**RESIDENT MAGISTRATE**