

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 072 OF 2008

BETWEEN:

THE STATE

Complainant

AND:

RAYMOND RAJENDRA SINGH

Accused

Counsel: Mr. A. Rayawa & Ms. J. Shah for the State
Mr. H.A. Shah for the Accused

Date of Hearing: Thursday 22nd January 2009

Date of Ruling: Monday 26th January 2009

RULING

[1] The defence objects to the admissibility of an oral confession made by the Accused to the police. The objections are that the confession was not made at all by the Accused, and that the Accused was not advised of his constitutional right to counsel upon arrest.

[2] A trial within trial was held to determine the admissibility of the confession.

Law

- [3] The governing principles to determine the admissibility of a confession were summarized by Shameem J in ***State v Vasuitoga & Qurai***, Criminal Case No. HAC 008/06S (12 February 2007). Her Ladyship said:

“When a suspect gives an inculpatory statement to a person in authority, it must be shown by the prosecution to have been obtained voluntarily and without unfairness or oppression. Further the prosecution must prove that the confession was obtained in accordance with the Constitution, and if there were breaches of the rights of suspects under the Constitution, that the suspect was not thereby prejudiced. The prosecution must prove all these issues to the satisfaction of the court, beyond reasonable doubt.

The test for voluntariness is whether the suspect gave his statement freely, without oppression or hope of advantage, or fear of disadvantage. The purpose of the rule of admissibility and of the suspect’s rights under the Constitution is to remove the inherent imbalance of power which exists when a suspect is questioned in custody, whilst preserving the right of the police to question anyone in the course of proper investigations and in the public interest. In the determining of issues relevant to the admissibility of confessions, these are the principles to be considered, and balanced.”

- [4] The rights of an arrested or detained person is contained in s.27(1) of the Constitution. Section 27(1) states:

Every person who is arrested or detained has the right:

- (a) to be informed promptly in a language that he or she understands of the reason for his or her arrest or detention and of the nature of any charge that may be brought;
- (b) to be promptly released if not charged;
- (c) to consult with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice require legal representation to be available, to be given the services of a legal practitioner under a scheme for legal aid;
- (d) to be given the opportunity to communicate with, and to be visited by:
 - (i) his or her spouse, partner or next-of-kin; and
 - (ii) a religious counselor or social worker;
- (e) to challenge the lawfulness of his or her detention before a court of law and to be released if the detention is unlawful; and
- (f) to be treated with humanity and with respect for his or her inherent dignity.

[5] If a person is arrested for a suspected offence, he or she has the following additional rights as outlined in sub-section (3):

- (a) to be informed promptly in a language that he or she understands that he or she has the right to refrain from making a statement;
- (b) to be brought before a court no later than 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter; and

(c) to be released from detention on reasonable terms and conditions pending trial, unless the interests of justice otherwise require.

[6] In ***Deo v State***, Criminal Appeal No. AAU0015 (16 May 2003) the Court of Appeal held that exclusion of statements obtained in breach of the Constitution is discretionary. The Court emphasized that “the police must be assiduous in advising detained citizens of their rights and failure to do so will prime facie result in the exclusion of statements taken in breach of those obligations.” Although an exhaustive list of factors could not be made, the Court identified the following circumstances to be considered in the weighing process:

“What kind of evidence was obtained? What Charter right was infringed? Was the charter violation serious or was it of a merely technical nature? Was it deliberate, willful or flagrant, or was it inadvertent or committed in good faith? Did it occur in circumstances of urgency or necessity? Were there other investigatory techniques available? Would the evidence have been obtained in any event? Is the offence serious? Is the evidence essential to substantiate the charge? Are other remedies available?”

Evidence

[7] The prosecution called three witnesses – Inspector Dharmen Chandra, D/Cpl. Epeli Senitiri and Cpl. Joji Ravaga. The defence called the Accused to give evidence.

[8] Inspector Dharmen said at around 3am on 11 May 2008, he attended a homicide report at 178 Ragg Avenue. When he arrived at the scene, he saw a

European woman lying inside the house in a pool of blood. After seeing the body and the wound on the woman's neck, Inspector Dharmen treated the case as homicide and ordered the scene to be sealed off for forensics. While at the scene, Inspector Dharmen learnt that the Accused had fled the scene. After obtaining information as to the possible whereabouts of the Accused, Inspector Dharmen and his team went to 255 Fletcher Road, Vatuwaqa. They were met by the Accused's father who let the officers inside his house where the Accused was sitting with his sons and his mother. Inspector Dharmen introduced himself and his team to the Accused and told him that he was under arrest for the death of his wife. Inspector Dharmen cautioned the Accused of his right to remain silent and when the Accused was being escorted to the police vehicle, he said "all this happened out of frustration". Inspector Dharmen then asked the Accused what happened out of frustration, to which Accused replied "I killed my wife out of frustration". Inspector Dharmen said he permitted the Accused's father to accompany him to the police station upon his request. Inspector Dharmen said he recorded the statement of the Accused in his note book but he did not find it necessary to invite the Accused to sign it because the entries in the note book are contemporary recording of notes. Inspector Dharmen said he did not advise the Accused of his right to counsel because to his understanding the right to counsel is administered prior to the commencement of a formal interview and he was not the interviewing officer.

- [9] D/Cpl. Senitiri said he was present when the Accused confessed to Inspector Dharmen after the right to remain silent was administered to him. In cross examination, D/Cpl. Senitiri admitted that his police statement which was self recorded on 11 May 2008 is not entirely consistent with his evidence. D/Cpl. Senitiri explained that he recorded his statement after long hours of work without any break on that particular day.

- [10] Cpl. Ravaga said he was standing at the door when Inspector Dharmen cautioned the Accused of his right to remain silent. Cpl Ravaga was then told to guard the rear entrance. He did not hear any other conversation.
- [11] The Accused said when the police officers arrived at his parent's home, he was not informed that he was being arrested, nor was his cautioned or was advised of his constitutional rights. The Accused said he did not make any confession to the police.

Analysis

- [12] The issue in this case is not whether the confession was voluntarily made, but the issue is whether the confession was in fact made by the Accused. In other words, the defence contends that the police have fabricated the confession. Where the voluntariness of a confession is not challenged but the actual making of the confession is challenged, in absence of any other reasons to exclude the confession, the confession is admissible because the issue of whether the confession was fabricated by the police is a question of fact for the assessors to consider having regard to all the evidence and not for the judge as a question of law going to its admissibility.
- [13] The question is whether the confession should be excluded on other grounds. When the Accused was arrested, he was entitled to the advisement of his constitutional right to counsel. In this respect, I find he was not advised of his right to counsel upon arrest. However, I am satisfied beyond reasonable doubt that the Accused was not prejudiced by the breach. The circumstances in which the Accused made the confession are relevant. I accept the evidence of the police officers over the evidence of the Accused. I accept the explanation given

by D/Cpl. Senitiri for the inconsistencies in his police statement. According to the prosecution evidence, the Accused was informed that he was being arrested for the death of his wife. After effecting arrest the Accused was advised of his right to remain silent. While being escorted to the police vehicle in the presence of his parents, the Accused uttered the incriminating statements. There is no suggestion that the police used any force, pressure, promise or inducement, to cause the Accused to utter the incriminating statements. The statements were spontaneous utterance after the Accused was advised of his right to remain silent. Despite being not advised of his right to counsel, I am satisfied beyond reasonable doubt the breach was not deliberate, and the incriminating statements would have been uttered in any event. I do not accept the version of events given by the Accused, that is, he was not advised that he was under arrest and that his right to remain silent was not given. It is unfortunate that I had to make findings on credibility on collateral issues, when the substantive issues are still to be tried. However, this situation could not be avoided.

[14] The oral confession of the Accused is admissible.

.....
Daniel Goundar
JUDGE

At Suva
Monday 26 January 2009

Solicitors:

Office of the Director of Public Prosecutions, Suva for the State
Haroon Ali Shah Lawyers, Lautoka for the Accused