

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 325 of 2015

[CRIMINAL JURISDICTION]

STATE

V

1. MATIA TUIBUA TUBUMASI QAQANIKOROVOU
2. JIMILAI TAWAKEDRAU DROSE

Counsel : Mr. R. Kumar with E. Samisoni for State
Mr. A. Chand for 1st Accused
Mr. R. Vananalagi for 2nd Accused

Dates of Hearing : 07th - 08th February 2017

VOIR DIRE RULING

1. The prosecution intends to use the confessions recorded in the cautioned interview statement (tendered during the hearing as VDPE1) of the second accused, during trial.
2. The trial dates in this case were fixed on 26th May 2016 when both accused were present in court. The second accused did not appear since 30th January 2017. On 07th February 2017, the prosecution made an application to proceed with this trial in the absence of the second accused. The second accused knew that the trial against him in this case was scheduled from 07th February 2017 to 21st February 2017. His absence was a clear indication that he had chosen not to be present for his trial. Therefore, I decided to proceed with the trial against the second accused *in absentia*.

3. Therefore, this inquiry is held in the absence of the second accused. However, the second accused is legally represented.
4. The second accused challenges the voluntariness of the cautioned interview based on the following grounds;
 - a) *That prior to his arrest on the 9th of October 2015, the accused was subjected to verbal abuse by one unidentified i-taukei police officer.*
 - b) *That during his arrest on the 9th of October 2015, the accused was subjected to physical abuse by unknown officers of the CID, Samabula Police station and the Strike Back team.*
 - c) *That after his arrest on the 9th of October 2015, the accused was subjected to physical abuse by D/IP Epeli Vamosi, D/C Peni, S/C Tukana, Vilikesa (CID Officer of Samabula Police Station) and some unknown officers of the CID Samabula Police Station, Lami Police Station and the Strike Back team.*
 - d) *That after his arrest on the 9th of October 2015, the accused was threatened by CID Officer Vilikesa of Samabula Police Station whilst he was being transported to Raiwaqa Police Station.*
 - e) *That prior to the caution interview on the 9th of October 2015, the accused was also threatened by Police Officer Jone of Raiwaqa Police Station.*
 - f) *That prior to the caution interview on the 9th of October 2015, the accused was threatened by the interviewing officer, DC 1853 Luke.*
 - g) *That the charging officer, DC 3691 Joape Qio, whilst charging the accused on the 10th of October 2015 also forced him to sign on the charge statement.*
5. In order to rule that the cautioned interview is admissible in evidence, the court has to be satisfied beyond reasonable doubt that the admissions in the statement were made voluntarily and that it was obtained in a fair manner.
6. Six police officers who dealt with the second accused from the time of arrest to the time the charge statement was recorded gave evidence on behalf of the prosecution.

7. The counsel for the second accused suggested to the prosecution witnesses that the second was assaulted on his back during arrest with a baton. He tendered a medical report dated 27th October 2015 which was issued pursuant to an order made by this court to have the second accused produced before a doctor on the request made by the second accused on 26th October 2015. According to the said medical report the doctor who examined the second accused had observed longitudinal bruise marks on the upper back region.
8. The counsel for the second accused also took up the position that the sixth prosecution witness who said that he was the witnessing officer was not present during the cautioned interview. He highlighted that the relevant station diary entries do not indicate that the sixth prosecution witness was involved in the cautioned interview of the second accused.
9. First, second, fourth and fifth witnesses were officers who took part in the raid conducted at Delainavesi and the second accused was arrested by the second prosecution witness with the assistance of two other officers during this raid. The second witness said he found the 2nd accused underneath a bed inside a room. He said the second accused resisted by kicking him when he tried to grab the second accused's legs. Then the accused was pulled out with the assistance of two other officers. He informed the second accused the reason for the arrest and about the right to remain silent. The accused was then handcuffed and was taken to the vehicle. All the witnesses said that the accused was not threatened, assaulted or verbally abused during arrest and during the time the accused was escorted to the Raiwaqa Police Station.
10. Third witness was the charging officer. He said he formally charged the 2nd accused on 10th October 2015. He did not notice any indication of physical abuse on the accused. The accused did not make any complaint to him. He said the accused signed the charge statement voluntarily.

11. Sixth witness was the witnessing officer of the cautioned interview. He said he was present during the entire cautioned interview. He said that the accused was not threatened by the interviewing officer before or during the interview. He said the second accused gave the answers on his free will and signed the cautioned interview statement voluntarily. He admitted that it is not mentioned in the station diary that he was the witnessing officer in the second accused's cautioned interview. He admitted that his name is only mentioned in an entry where it states that he brought the accused after the re-construction. He said, the entries in the station diary are maintained by the diary keeper and the diary keeper may have written the name of only one officer.
12. The admissibility of VDPE1 was challenged on the basis that there was oppression. The evidence given by the prosecution witnesses was consistent. The medical report that was tendered was issued based on the examination conducted after nearly three weeks from the date of arrest. The fact that the police officers had to pull the accused as the accused was hiding under a bed would explain the injuries even if it is assumed that the injuries noted in the medical report did occur at the time of arrest.
13. Having considered all the evidence and matters raised by the counsel for the second accused, I am satisfied that VDPE1 was made voluntarily.
14. In the circumstances, I hold that the cautioned interview statement (VDPE 1) is admissible in evidence.



Vinsent S. Perera

JUDGE

Solicitors for the State	: Office of the Director of Public Prosecution, Suva
Solicitor for the 1 st Accused	: Legal Aid Commission, Suva
Solicitor for the 2 nd Accused	: R. Vananalagi & Associates