

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 021 of 2022

STATE

vs.

PENI RARAWA

Counsel: Ms. B. Kantharia with Ms. N. Ali for the State
Mr. E. Veibataki for the Accused

Date of Ruling: 10th March 2023

RULING

[On Voire Dire]

1. The Prosecution proposed to adduce the caution interview of the accused in evidence, for which the Accused objected on the following grounds *inter alia*;
 - a) *At the time of arrest, on the 15th August, 2021, Peni Rarawa was not given his rights, nor explained the reason for arrest before he was taken to the village Hall and questioned along with others by the Police.*
 - b) *When Peni Rarawa was taken to the Levuka Police Station in the interview room, he was sworn at by the three i-taukei police officers known to Mr. Rarawa as Koli, Simi and Josua.*

- c) *Peni Rarawa was punched around his ribs and face by Koli while the two officers Simi and Josua were swearing at him.*
 - d) *He was further threatened with physical assaults by the above named police officers should he continue to deny the allegations.*
 - e) *He was handcuffed throughout caution interview, the assaults and the threats.*
 - f) *Peni Rarawa was induced by the interviewing officer to admit by offering him cigarettes prior to and during the interviews.*
2. The trial within a trial (voir dire) commenced on the 8th of March 2023 and concluded on the 9th of March 2023. The Prosecution presented the evidence of four witnesses, and the accused gave evidence for the Defence. The Court then heard the submissions of the learned Counsel for the Prosecution and the Defence. Having carefully considered the evidence presented during the hearing and the Accused's written submissions, I now pronounce the ruling as follows.
 3. The Accused mainly alleged that he was assaulted by the Interviewing Officer and the Officer who arrested him during the recording of the Caution Interview; hence, he was threatened and intimidated.
 4. In their evidence, the Interviewing Officer and the Witnessing Officer of the caution interview stated that they properly conducted the recording of the interview, giving the Accused all his rights. They assertively stated that no one assaulted or intimidated the Accused during the recording. However, the Interviewing Officer confirmed that the Accused was taken to the Hospital for a medical examination after recording the interview because the villagers assaulted the Accused after the alleged incident.

5. The Accused claimed that the Interviewing Officer and another officer assaulted him on his mouth and chest during the recording, threatening him to cooperate with them to make things easy.

The Law

6. House of Lords in **R v Mushtaq (2005) 3 All ER 885, at 908** has discussed the importance of careful evaluation of the confession before it is accepted in evidence, where His Lordship held that:

"It has long been recognised that the content of a confession made by an accused person has to be evaluated with great care in order to determine whether it can safely be accepted as an admission against his interest. The approach of the law to that evaluation has varied over the years, and the rules applied by the courts have to be kept under review to ensure that they reflect the standards accepted by each generation."

7. The Fiji Court of Appeal in **Shiu Charan v R (F.C.A. Crim. App. 46/83)** has discussed the applicable test of admissibility of caution interview of the accused person in evidence at the trial. The Fiji Court of Appeal in **Shiu Charan (supra)** held that:

*"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 or prejudice or inducement by offer of some advantage - what has been picturesquely described as "the flattery of hope or the tyranny of fear." *Ā, Ibrahim v R (1914) AC 599. DPP v Pin Lin (1976) AC 574. 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 the Police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ c -**

E." (State v Rokotuiwai - [1996] FJHC 159; HAC0009r.95s (the 21st of November 1996)."

8. The Fiji Court of Appeal in **Fraser v State** ([2012] FJCA 91; AAU24.2010 (the 30th of November 2012) held that:

"The court shall not allow a confession to be given in evidence against him unless the prosecution proves beyond reasonable doubt that the confession was not obtained (a) by oppression of the person who made it (b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in consequence thereof."

9. The test enunciated in **Shiu Charan (supra)** and **Fraser (supra)** constitutes two components. The first component is the test of oppression. The Court is required to satisfy the caution interview was recorded without any form of force, threats, intimidation, or inducement by an offer of any advantage. The second component is that even though the Court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation, or inducement, it is still required to satisfy that no general grounds of unfairness existed before or during the recording of the caution interview.
10. The Prosecution has the onus to prove beyond a reasonable doubt that the accused made his confession voluntarily, and the caution interview was recorded in a fair and just manner.
11. The Court observed certain inconsistencies between the evidence given by the Interviewing Officer and the Witnessing Officer. The Interviewing Officer testified that the caution interview was conducted in the i-taukei language, while the Witnessing Officer said it was in English. According to the Interviewing Officer, the Accused's questions and answers were recorded manually. On the contrary, the Witnessing Officer claimed the interview was recorded on a Computer. The Defence did not deny the version given by the Interviewing Officer.

12. The Interviewing Officer admitted that the Accused was taken for a medical examination after recording the caution interview. According to him, the Accused was assaulted by the villagers after the alleged incident; hence, his superior Officer instructed him to take him for a medical examination. The Interviewing Officer confirmed that a medical report was made, but it was misplaced at the Police Station. Therefore, the said medical report was not disclosed or produced in evidence.
13. Meanwhile, the Accused claimed that he asked the Police to take him to a Doctor because he felt pain in his chest after they assaulted him on his chest and face. There is no evidence before the Court to ascertain the real reasons for taking the Accused for a medical examination. Hence, there is a reasonable doubt whether he was taken to the Doctor due to the pain he suffered after he was assaulted during the record of the caution interview.
14. In view of the reasons discussed above, there is a reasonable doubt whether the Police officers assaulted the Accused during the recording of the caution interview. Under such circumstances, there is further reasonable doubt whether the Accused gave his answers voluntarily, thus making its admissibility in evidence unsafe.
15. In conclusion, the caution interview of the accused is not admissible in evidence on the ground that there is reasonable doubt whether the Accused's confession was voluntary or not.



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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

10th March 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.