

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 052 OF 2015S

STATE

vs

JOJI VORAVORA

Counsels : **Mr. M. Vosawale and Ms. S. Sharma for State**
Accused in Person
Hearings : **16 and 17 May, 2016**
Ruling : **17 May, 2016**
Written Reasons: **20 May, 2016**

WRITTEN REASONS FOR VOIR DIRE RULING

1. The accused was charged with "Unlawful Cultivation of Illicit Drugs", contrary to Section 5 (a) of the Illicit Drugs Control Act 2004. It was alleged that he unlawfully cultivated 438 plants of cannabis sativa, an illicit drug, weighing a total of 33.7 kilogram, on 16 January 2015, at Vunivetau Farm at Kadavu in the Southern Division.
2. During the police investigation, the accused was caution interviewed by police on 16 January 2015 at Kadavu Police Station, wherein he allegedly admitted the offence. On 16 and 17 May 2016, he challenged the admissibility of the police caution interview statements in a voir dire.
3. The prosecution called nine witnesses, while the defence called the accused himself. I heard the parties and after hearing their closing submissions, I ruled the accused's caution interview

statements as admissible evidence. I said I would give my written reasons later. Below are my reasons.

4. The law in this area is well settled. On 13th July 1984, the Fiji Court of Appeal in **Ganga Ram & Shiu Charan v Reginam**, Criminal Appeal No. 46 of 1983, said the following, *“...it will be remembered that there are two matters each of which requires consideration in this area. 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 – what has been picturesquely described as the “flattery of hope or the tyranny of fear” Ibrahim v R (1941) AC 599, DPP v Ping 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. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account”*
5. In this case, the dispute between the parties was familiar. The police caution interview officer (PW9) said the accused was given his right to counsel, and his other rights. He was given his standard breaks. He said, the accused was formally cautioned and he co-operated with the police. He said, the accused was not assaulted nor threatened by police, while he was in their custody. PW9 said, the accused gave his statement voluntarily and out of his own free will.
6. The accused, on the other hand, said he was repeatedly assaulted and threatened by police, while in their custody. As a result, he was frightened and admitted the offence. He appeared to say that, he did not voluntarily give his police caution interview statements to the police, and ask the court to declare the same as inadmissible evidence.
7. I have carefully considered the parties' version of events. I have listened very carefully to their evidence. After considering the authorities mentioned in paragraph 4 hereof, and after looking at all the facts, I have come to the conclusion that the accused gave his caution interview statements voluntarily and out of his own free will. I therefore ruled his caution interview statements as admissible evidence, and the same could be used in the trial proper, but its weight and value, are matters for the assessors to decide.
8. In giving my reasons abovementioned, I bear in mind what the Court of Appeal said in **Sisa Kalisoqo v Reginam**, Criminal Appeal No. 52 of 1984, where their Lordships said: *“...We have*

of recent times said that in giving a decision after a trial within a trial there are good reasons for the Judge to express himself with an economy of words..."

9. The above were the reasons for my ruling on 17 May 2016.



Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva.
Solicitor for Accused : In Person