

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 288 OF 2015S

STATE

vs

APAKUKI KAUYACA VITUKAWALU

Counsels : **Ms. S. Navia and Ms. B. Kantharia for State**
Mr. K. Maisamoa for Accused

Hearings : **13 and 14 June, 2016**

Ruling : **14 June, 2016**

Written Reason : **8 July, 2016**

WRITTEN REASONS FOR VOIR DIRE RULING

1. The accused was charged with "Unlawful Cultivation of An Illicit Drug", contrary to section 5 (a) of the Illicit Drugs Control Act 2004. It was alleged that he unlawfully cultivated 11 kilograms of cannabis sativa plants between 1 July 2011 and 3 January 2012 at Kadavu in the Eastern Division.
2. During the police investigation, the accused was caution interviewed by Sergeant 1785 Sakaraia Tuberi (PW4) at Kadavu Police Station on 3, 4 and 5 January 2012. On 7 January 2012, Acting Corporal 3036 Amani Satuwere (PW5) formally charged the accused at Kadavu

Police Station. In his caution interview and charge statements, the accused allegedly admitted the offence. On 13 and 14 June 2016, the accused challenged the admissibility of his alleged confessions in his caution interview and charge statements in a voir dire hearing.

3. The prosecution called 6 witnesses, all police officers. The defence called 3 witnesses, the accused, his daughter and elder brother. I heard the witnesses' evidence and the parties closing submissions. I ruled the accused's caution interview and charge 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 were familiar. The prosecution witnesses said they did not assault, threaten or made false promises to the accused, while he was in their custody. The caution interview officer (PW7) said he caution interviewed the accused on 3, 4 and 5 January 2012. He said, the accused was formally cautioned, given his right to counsel, given the standard meal and rest breaks. PW7 said the accused co-operated with the police and gave his statements voluntarily and out of his own free will.
6. On 7 January 2012, the accused was formally charged by the charging officer (PW5). PW5 said the accused was given all his rights. PW5 said the accused co-operated with him and he gave his statements voluntarily and out of his own free will. The police officers who arrested the accused said they did not assault, threaten or made promises to the accused while he was in their custody. According to the prosecution, the accused never complained to the Magistrate when he first appeared in court on 10 January 2012.

7. As far as the defence were concerned, the prosecution witnesses were mistaken. According to the accused, the police repeatedly assaulted him at his home when he was arrested. His daughter (DW2) and his elder brother (DW3) confirmed the above. The accused said, he was again repeatedly assaulted at Kadavu Police Station. According to the accused, he never gave his caution interview and charge statements voluntarily, and asked the same to be ruled inadmissible.
8. I have carefully considered the parties' evidence and version of events. I have listened very carefully to their verbal submissions. After considering the authorities mentioned in paragraph 4 hereof, and after looking at all the facts, I had come to the conclusion that the accused gave his caution interview and charge statements voluntarily and out of his own free will. I therefore ruled his caution interview and charge statements as admissible evidence, but its acceptance or otherwise, will be a matter for the assessors in the trial proper.
9. 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..."
10. The above were the reasons for my ruling on 14 June 2016.




Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva
Solicitor for Accused : Maisamoa, Barrister and Solicitor, Suva.