

IN THE HIGH COURT OF FIJI AT SUVA

[CRIMINAL JURISDICTION]

CASE NO: HAC. 041 of 2015

STATE

V

LAISA TAVAILAGI

ILIESA NABANA

VERAMU NAIVALUVOU

Counsel : Mr. M. Vosawale for State
Ms. S. Prakash for 1st Accused
Mr. K. Maisamoa for 2nd & 3rd Accused

Dates of Hearing : 11th - 14th October 2016

Date of Ruling : 17th October 2016

VOIR DIRE RULING

1. The three accused were charged with the following offence;

Statement of offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to section 5 (a) of the Illicit Drugs Control Act 2004.

Particulars of offence

LAISA TAVAILAGI, ILIESA NABANA, VERAMU NAIVALUVOU
on the 14th day of January 2015, at Lowalevu Farm, Gasele Village,

Kadavu in the Southern Division, without lawful authority cultivated 264 plants of cannabis sativa an illicit drug, weighing 43.9 kilograms.

2. The first accused pleaded guilty to the charge before the trial commenced and was convicted accordingly.
3. The prosecution is relying on the confessions made by the 2nd and 3rd accused in their caution interview statements.
4. The 2nd accused challenges the admissibility of his cautioned interview statement on the following grounds;
 - a) *Accused was threatened making him scared as he saw the two accused persons were injured.*
 - b) *The manner of interview was oppressive in the sense that the police says to the accused to admit that he cultivates marijuana to make things easier.*
 - c) *That at the point of the accused arrest his right and the reason for his arrest was not given to him.*
 - d) *That the accused right to remain silent as per the provision of the 2013 Constitution was violated by the interviewing officer.*
 - e) *That there was a breach of his rights under the Judges Rules and Article 14(3)(g) of the International Covenant on Civil and Political Rights whilst he was charged by police.*
5. The 3rd accused challenges the admissibility of his cautioned interview statement on the following grounds;
 - a) *That during one of the breaks when the caution interview was being conducted 2 unknown i-Taukei police officers threatened him that they will hit him if he didn't agree to the allegation.*
 - b) *That he admitted the allegations out of fear that he will be assaulted.*
6. Accordingly, a voir dire on the admissibility of the two cautioned interview statements was held in the absence of the assessors.
7. The prosecution led the evidence of four police officers in order to prove beyond reasonable doubt that the two cautioned interview statements were made voluntarily. Thereafter the two accused gave evidence.

8. All four prosecution witnesses were members of the police team who conducted 'Operation Sasamaki' in Gasele, Kadavu. The first prosecution witness said he arrested the 2nd and 3rd accused. The second prosecution witness had witnessed the arrest. The third prosecution witness was the interviewing officer of the 2nd accused. The fourth prosecution witness was the interviewing officer of the 3rd accused and he had also witnessed the 2nd accused's cautioned interview.
9. In order for a confession to be used against an accused as evidence, that is, for a confession to be admissible in evidence, that confession should have been made voluntarily by the relevant accused with the knowledge that he has the right to remain silent and that his confession may be used against him as evidence. The purpose of having a voir dire with regard to the admissibility of a cautioned interview is to ascertain whether the confession included in that cautioned interview was made voluntarily.
10. The defence submits that the two accused were not given their rights properly when they were arrested. The prosecution is not relying on any statement made by the two accused during arrest. Therefore, the fact whether the rights were given to the accused during their arrest has no relevance to this voir dire which was held to consider the admissibility of the two cautioned interview statements. It is evident from the two cautioned interviews that the standard rights required to be given to an accused during the recording of a cautioned interview have been given.
11. It was highlighted during the evidence of the third witness for the prosecution that the 2nd accused was interviewed first at Kadavu Police Station and then at Nabua Police Station. When the accused was interviewed at the Kadavu Police Station, he had made certain admissions. However, when the interview continued at the Nabua Police Station, the 2nd accused had denied the allegation. It is pertinent to note that during cross examination, the third

witness for the prosecution affirmed that the reason for the 2nd accused to change his version was the change of circumstances in the two police stations. The second accused's evidence was that there was oppression at the Kadavu Police Station and there was no pressure when he was interviewed at the Nabua Police Station.

12. Considering the above, there is a reasonable doubt regarding the voluntariness of the 2nd accused's cautioned interview. The fact that the 2nd accused subsequently denied the allegation itself creates a doubt as to whether his initial admissions were made voluntarily. It should be noted that the reason given by the 2nd accused for giving two versions in his cautioned interview is corroborated to a certain extent by the admission made by the third prosecution witness. That is, the environment at the Kadavu Police Station during the recording of the cautioned interview was oppressive and that oppression led the 2nd accused to make the confessions.
13. The 3rd accused also claims that he made admissions in his cautioned interview due to oppression. 2nd accused's cautioned interview was conducted at the Kadavu Police Station on 15/01/15. The 3rd accused had also confessed on 15/01/15 during his cautioned interview conducted at Kadavu Police Station. I also note that the 3rd accused had made certain admissions on 18/01/15 when he was interviewed at the Nabua Police Station. Considering the available evidence, I cannot rule out the possibility that the 3rd accused may also have confessed due to oppression.
14. All in all, I find that the prosecution has failed to establish beyond reasonable doubt that the cautioned interview statements of the two accused were made voluntarily.

15. Therefore, I rule that the two cautioned interview statements VDPE 01 (English translation VDPE 02) and VDPE 03 are not admissible in evidence.



Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Legal Aid Commission, Suva.
: Vakaloloma & Associates, Suva