

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 360 OF 2016S

**STATE**

vs

**ALIFERETI RATOKABULA**

Counsels : Mr. E. Samisoni and Ms. S. Lodhia for State  
Ms. V. Filipe and Ms. L. Manulevu for Accused  
Hearings : 1, 2, 5, 6 and 7 March, 2018  
Summing Up : 8 March, 2018

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**SUMMING UP**

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**A. ROLE OF JUDGE AND ASSESSORS**

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.
  
2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case.

Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

**B. THE BURDEN AND STANDARD OF PROOF**

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim, which is the public in this case. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

**C. THE INFORMATION**

7. You have a copy of the information with you, and I will now read the same to you:  
*"...[read from the information]..."*

**D. THE MAIN ISSUE**

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:

- (i) Did the accused, on 26 September 2016, at Naqara Village, Ono, Kadavu in the Southern Division, without lawful authority, cultivated 170 cannabis sativa plants, weighing 21.95 kg?

**E. THE OFFENCE AND IT'S ELEMENTS**

9. The accused was charged with "Unlawful cultivation of an illicit drug", contrary to Section 5(a) of the Illicit Drugs Control Act 2004. For the accused to be found guilty, the prosecution must prove beyond reasonable doubt, the following elements:
  - (i) the accused
  - (ii) knowingly
  - (iii) without lawful authority
  - (iv) cultivated
  - (v) an illicit drug
10. Under Section 2 of the Illicit Drugs Control Act 2004, an "Illicit Drug" means "any drugs listed in Schedule 1 of the Act". In Schedule 1 Part 8 of the above 2004 Act, a "Cannabis plant", whether fresh, dried or otherwise, is an "Illicit Drug". A cannabis sativa plant, commonly known as a marijuana plant, according to the above definition, is an "Illicit Drug". To make the accused liable for the offence, the prosecution must make you sure that what the accused was cultivating, at the material time, was an "Illicit Drug", within the definition of the above 2004 Act.
11. The prohibited act in the offence is the verb "cultivate". Under Section 2 of the Illicit Drugs Control Act 2004, the word "cultivate" means "planting, sowing, scattering the seed, growing, nurturing, tendering or harvesting". Put simply, the prosecution must make you sure that the accused was planting or growing an illicit drug, at the material time. This is the physical element of the offence.
12. In addition to the above, the prosecution must make you sure that, the accused, at the material time, knowingly cultivated an illicit drug. It must be shown that the accused knew, at the material time, that he was cultivating an illicit drug. This is the mental element or fault element of the offence.
13. The prosecution must also make you sure that the accused had no lawful authority to cultivate an illicit drug, at the material time. However, the accused can escape liability for the offence if

he proves, on the balance of probabilities, that he had lawful authority to cultivate the illicit drug. You must look at and carefully consider the total evidence, when answering the above issues.

**F. THE PROSECUTION'S CASE**

14. The prosecution's case were as follows. The accused was 24 years old. He was married with a young daughter, and resided in Naqara Village with his wife, daughter and father. He was a subsistence farmer, and planted yaqona, dalo and cassava for a living. According to prosecution, prior to 26 September 2016, police received information that he was allegedly cultivating marijuana plants, near his village.
15. According to prosecution, on 26 September 2016, they put together a raiding party. The same consisted of four police officers; Sergeant 4594 Semi (PW1); PC 4749 Natui (PW2); PC 4490 Sevanaia (PW3) and Corporal 3283 Tumanu (PW4). They were accompanied by four military officers, who were armed with rifles. According to the prosecution, in previous raids, the police had been violently attacked by villagers who opposed the raids. The military officers were there to provide security to the police officers. According to the prosecution, the police party arrived at Naqara village between 7 and 7.15 am on 26 September 2016
16. According to prosecution, the police party went straight to the marijuana farm. From the village sea shore to the farm, it took them about 5 to 10 minutes walk. At the farm, the police allegedly found and uprooted 170 marijuana plants. They packed the same into two sacks, and took the same to the boat. PW3, who was leading the team to the farm, allegedly found that the marijuana plants had just been watered. He followed a track near the farm and followed a man walking in front of him. He later sought the Village Headman's assistance. He also sought PW4's assistance.
17. According to prosecution, the Village Headman allegedly took PW3 and PW4 to the man's residence. PW3 and PW4 allegedly questioned the man about the marijuana farm. According to prosecution, the man verbally admitted the farm was his. PW3 allegedly arrested the man. The man was the accused. He was taken to the village sea shore, put in a boat, and taken by police to Kadavu Police Station. The marijuana plants were also taken in the boat to Kadavu Police Station.

18. At Kadavu Police Station, the 170 marijuana plants were analysed by the government analyst, Ms Miliana Werebauinona (PW11). The same were found to be cannabis sativa, an illicit drug. The accused was also caution interviewed by Corporal 3642 Josua (PW8) on 26 September 2016. The interview was continued on 28 September 2016. In the interview, the accused allegedly admitted the offence. He was taken to the Suva Magistrate on 30 September 2016, and later to the High Court on 14 October 2016, charged with "unlawful cultivation of an illicit drug".
19. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.
- G. **THE ACCUSED'S CASE:**
20. On 5 March 2018, the first day of the trial proper, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to the charge. In other words, he denied the allegation against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he choose to remain silent, and called no witness. That was his constitutional right.
21. Nothing negative whatsoever should be imputed to the accused for choosing to remain silent and for choosing not to call any witness. Remember in paragraph 4 hereof, I have told you that, as a matter of law, the burden to prove the accused's guilt beyond reasonable doubt, lies on the prosecution throughout the trial, and it never shifts to the accused. He is not required to prove his innocence or prove anything at all. He is entitled to sit there, fold his arms, and demand that the prosecution prove his guilt beyond reasonable doubt, as he had done in this case.
22. However, all is not lost for you, if you want to know his stand on the case. He was allegedly caution interviewed by police on 26 and 28 September 2016. He was allegedly asked 45 questions and he allegedly gave 45 answers. His caution interview statements were tendered in evidence as Prosecution Exhibit No. 1 and 2. In the interview notes, in question and answers 18 to 39, he allegedly admitted the offence. Although the accused choose to remain silent on his stand on the above alleged confession, in his cross-examination of the police caution interview officer, witnessing officer and arresting officers, he appeared to be saying that the police forced the above confession out of him by repeatedly threatening him, and thus he did not give

his police statements voluntarily. He appeared to be asking you to disregard the above alleged confession by him. We will discuss this issue later when we analyse the evidence.

23. In any event, he pleaded not guilty to the charge. He denied the allegation against him. As assessors and judges of fact, he is asking you, to find him not guilty of the charge. That was the case for the defence.

H. **ANALYSIS OF THE EVIDENCE:**

**(a) Introduction:**

24. In analysing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analysing the evidence, we will first discuss the State's case against the accused, then the accused's case, and the need to look at all the evidence.

**(b) The State's Case Against the Accused:**

25. The State's case against the accused was based on two premise. First, that the 170 marijuana plants uprooted by police at the farm near Naqara Village on 26 September 2016, were cannabis sativa, and thus illicit drugs. Second, that the accused first verbally admitted to police at Naqara Village, and second when he was caution interviewed on 28 September 2016, that the 170 marijuana plants were his and that he cultivated the same. We will now consider these two premises.
26. Sgt 4594 Semi (PW1), PC 4749 Natui (PW2), PC 4490 Sevanaia (PW3) and Cpl 3283 Tumanu (PW4), all said they were part of the police raid team that visited the Naqara Village farm on 26 September 2016 after 7.15 am in the morning. All said, they found marijuana plants growing on the farm. PW1 and PW2 said they uprooted 170 marijuana plants from the farm, packed the same into two sacks and later carried the same to the village sea shore, where their fibre glass boat were. PW1 said, they later loaded the two sacks of marijuana plants in the fibre glass boat, and later took the sack to Kadavu Police Station.

27. PW1 said, at Kadavu Police Station, he handed the two sacks of marijuana plants to SC Paula Vece (PW5), the station orderly. PW5 then recorded the receipt of the same in the Station Diary. PW1 said, he later took the two sacks of marijuana plants and handed the same to PC 4651 Vakuru (PW6). PW6 was the police investigating officer. PW6 said, he later handed the 170 marijuana plants to Ms Susana Lawedrau (PW10). PW10 was the Forensic Science Officer for the Fiji Police. PW10 said, she received the 170 marijuana plants at Kadavu Police Station on 26 September 2016 after 1 pm. PW10 said, she later handed the 170 marijuana plants to the government analyst, for the same to be analysed.
28. The government analyst was Ms Miliana Werebauinona (PW11). She analysed the 170 marijuana plants on 26 September 2016. She produced two reports, which she tendered in evidence as Prosecution Exhibit No. 3(A), the certificate of Analysis, and 3(B), Analysis of Cannabis. PW11's report confirmed that the 170 marijuana plants were cannabis sativa, and thus illicit drugs. PW11 and PW10 later repacked the 170 marijuana plants by wrapping it in brown paper. The package was later returned to police and tendered in court as Prosecution Exhibit No. 4. From the above evidence, it could be seen that the 170 marijuana plants uprooted by police at a farm in Naqara Village, which found it's way to Kadavu Police Station, and which were analysed by the government analyst on the same day (i.e. 26 September 2016), were indeed "Cannabis Sativa", and were illicit drugs. Can the police prove who the illicit drugs belong to?
29. We now move on to discussing the second premise. No-one saw the accused actually cultivating the above 170 marijuana plants on 26 September 2016. This was obviously a difficulty for the prosecution. How can they connect the 170 marijuana plants to the accused? On this issue, the prosecution relied on the accused's alleged confessions, one given verbally, and one in writing when he was caution interviewed by police.
30. We will start with the alleged verbal confession. PC 4490 Sevanaia (PW3) said, he lead the police raid team to the Naqara farm on 26 September 2016 after 7.15 am. PW3 said, he saw the marijuana plants in the farm being recently watered. He followed a track beside the farm. He saw an i-taukei man in front of him. He followed him. He later sort the Village Headman's assistance. He described the man to the Headman. The Headman led him to the accused's house. PW3 said, he also took Cpl 3283 Tumanu (PW4) with him. PW3 said, they questioned the suspect on the marijuana farm. PW3 said, the suspect, who was the accused, admitted to

them, the marijuana farm was his. PW3 said, PW4 cautioned the accused. PW3 said, he later arrested the accused and brought him to the village fore shore. PW3 said, they later took the accused to Kadavu Police Station.

31. At Kadavu Police Station, Cpl 3642 Josua PW8) caution interviewed the accused on 26 and 28 September 2016. PW8 said, he asked the accused 45 questions and he gave 45 answers. PW8 said, the accused was given his right to counsel, other rights, the caution, the standard meal and rest breaks. PW8 said, he interviewed him in the i-taukei language, and later translated the same into English. He tendered the interview notes as Prosecution Exhibit 1 and 2. In the interview notes, from questions and answers 18 to 39, the accused admitted cultivating marijuana at the material time.
32. When considering the above evidence. I must direct you as follows, as a matter of law. A confession, if accepted by the trier of fact – in this case, you as assessors and judges of fact – is strong evidence against its maker. However, in deciding whether or not you can rely on a confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements as alleged by the police above. If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of the statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If it's otherwise, you may give it less weight and value. It is a matter entirely for you.
33. If you accept the accused's above confessions, then you will have to find the accused guilty as charged. If you don't accept the same, then you will have to find the accused not guilty as charged. It is a matter entirely for you.
- (c) The Accused's Case:**
34. I have summarized the accused's case to you in paragraphs 20, 21, 22 and 23 hereof. Although he choose to remain silent, in the way he cross-examined the prosecution's witnesses, he appeared to be saying that the police and the military threatened him to confess to the crime.



He appeared to be saying, in his cross-examination of the prosecution's witnesses that, he did not give his verbal and written confessions voluntarily and that the same were given without his free will. However, the prosecution witnesses denied his allegations, during the cross examination. Nevertheless, he pleaded not guilty to the charge. If you accept his plea, then you will have to find him not guilty as charged. If otherwise, you will have to decide on the strength of the prosecution's case. It is a matter entirely for you.

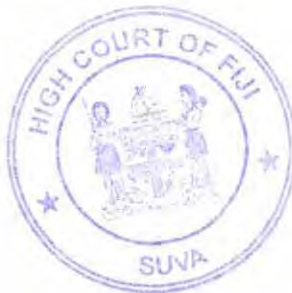
**(d) The Need to Consider All the Evidence:**

35. Eleven witnesses gave evidence for the prosecution:
- (i) Sgt 4594 Semi Vakanuivivaka (PW1);
  - (ii) PC 4749 Natui Bulivorovoro (PW2);
  - (iii) PC 4490 Sevanaia Qiolevu (PW3);
  - (iv) Cpl 3283 Tumanu Ravonu (PW4);
  - (v) SC 227 Paula Vece (PW5);
  - (vi) PC 4651 Vakuru Sawalu (PW6);
  - (vii) Sgt 3349 Moape Tau (PW7);
  - (viii) Cpl 3642 Josua Gagalia (PW8);
  - (ix) SC 2174 Viliame Laugasau (PW9);
  - (x) Ms. Susana Lawedrau (PW10);
  - (xi) Ms Miliana Werebauinona (PW11)
36. The prosecution submitted four exhibits:
- (i) Prosecution Exhibit No. 1 - I-taukei interview notes
  - (ii) Prosecution Exhibit No. 2 - English interview notes
  - (iii) Prosecution exhibit No. 3 (A) - 3(A) Certificate of Analysis
  - (iv) Prosecution Exhibit No. 3 (B) - 3 (B) Analysis of Cannabis
  - (v) Prosecution Exhibit no. 4 - Brown Packaging of 170 Marijuana Plants.
37. The defence submitted two exhibits:
- (i) Defence Exhibit No. 1 - carbon copy of the i-taukei interview notes
  - (ii) Defence Exhibit No. 2 - Kadavu Police Station Diary
38. Altogether, there were eleven witnesses, on whose evidence, you will have to make a decision. Please compare and analyse their evidence. If you find a piece of evidence important and I

haven't mentioned it, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his or her evidence, in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his or her evidence, in your deliberation. You are the judges of fact.

I. **SUMMARY**

39. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.
40. Your possible opinions are as follows:
- (i) Unlawful Cultivating of Illicit Drugs : Guilty or Not Guilty
41. You may retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.



  
**Salesi Temo**  
**JUDGE**

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