

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
LAUTOKA CRIMINAL CASE NO. HAC 024 OF 2019L

STATE
vs
MESULAME KURINACOB

Counsels : **Ms. J. Fatiaki for State**
Ms. E. Radrole and Ms. N. Singh for Accused

Hearings : **12 and 13 November, 2019.**

Ruling : **13 November, 2019.**

Written Reasons : **20 November, 2019.**

WRITTEN REASONS FOR VOIR DIRE RULING

1. On 12 November 2019, the accused was charged with the following information:

“Statement of Offence

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

Particulars of Offence

***MESULAME KURINACOB* between the 1st day of October 2016 and the 6th day of March 2017 at Navosa in the Western Division without lawful authority, cultivated 1,589 plants of Cannabis Sativa, an illicit drug, weighing 198 kilograms.”**

2. In the course of the police investigation, the accused was caution interviewed by police at Keyasi Police Station on 9 March 2017. Thereafter, on the same date, the accused was also formally charged by the police. During his caution interview and formal charging, it was alleged that the accused admitted the offence to the police.
3. On 12 and 13 November 2019, the accused, through his counsels, challenged the admissibility of the above alleged confessions in a voir dire. The defence argued that the police forced the confession out of the accused, and his caution interview and charge statements were given involuntarily, and without the accused's free will.
4. The prosecution called three witnesses, all police officers. The defence called the accused himself. Altogether, there were four witnesses, on whose evidence, the court will have to make a decision. At the end of the voir dire hearing, I ruled the accused's caution interview and charge statements were admissible evidence. I said, I would give my written reasons later. Below are my reasons.
5. 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 91980) 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...."**

6. I have carefully listened to and considered the evidence of all the prosecution and defence's witnesses. I have carefully examined their demeanors when they were giving evidence in court. I have carefully considered the parties' closing submissions.
7. The voluntariness of the caution interview statements was disputed by the parties. Accused said police "banged the table" in front of him, and he was scared. Accused said police forced him to admit the marijuana farm was his. As a result, he admitted the offence. The police, however, denied the above allegations. The police said, accused was treated properly while in police custody and he was given his rights during the interview. Police said, accused gave his interview and charge statements voluntarily.
8. After considering both the prosecution and defence's case, I came to the conclusion that the accused gave his interview and charge statements to the police voluntarily and out of his own free will. On the evidence, I also found that the police were not unfair to the accused, while he was in their custody. Even the accused admitted under cross-examination, that the police were not harsh to him, while he was in their custody.
9. The above were the reasons why I ruled the accused's caution interview and charge statements as admissible evidence. I said the acceptance or otherwise of the accused's interview and charge statements, at the trial proper, will be a matter for the assessors. I rule so accordingly.




Salesi Temo
JUDGE

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