

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 157 OF 2013S

STATE

vs

TOMASI BAGAGA

Counsels : **Ms. A. Vavadakua and Ms. V. Prasad for State**
Mr. J. Savou for Accused

Hearing : **24 February, 2015**

Ruling : **24 February, 2015**

Written Reasons: **27 February, 2015**

WRITTEN REASONS FOR VOIRE DIRE RULING

1. Mr. Tomasi Bagaga is presently charged with “unlawfully cultivating 5.5 kg of cannabis sativa (indian hemp) on 16 December 2012, at Lomaivuna Naitasiri”. During the police investigation, he was caution interviewed by WPC 3623 Taraivini Vusoni, of Vunidawa Police Station, on 16 December, 2012. In the interview, the accused allegedly admitted the above offence.
2. He challenged the admissibility of his police caution interview statements, through his counsel, on 24 February 2015, in a “trial within a trial”. The prosecution called four witnesses – all police officers. The accused was well aware of his trial date, but absconded on 11 March 2014, and had not been heard of since. On 6 February 2015, the court granted the prosecution’s application for trial in absentia. During this “trial within a trial”, because of his non-attendance, the accused was deemed to have chosen to remain silent.

3. 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. I have carefully considered the prosecution’s witnesses’ evidence, and I have analyzed them. I have considered the accused’s position to remain silent. After considering all the available evidence, I have come to the conclusion that the accused made the caution interview statements, and he made the same voluntarily and out of his own free will, and the same are ruled to be admissible evidence. Its acceptance or otherwise, will be a matter for the assessors.
6. The above are the reasons why I ruled the accused’s caution interview statements as admissible evidence on 24 February, 2015.



Salesi Temo
JUDGE

Solicitor for State
Solicitor for Accused

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Office of the Director of Public Prosecution, Suva.
Legal Aid Commission, Suva.