

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 08 of 2015

STATE

V

ETUATE DREDUADUA

Counsels: Mr. L. Fotofili for State
Accused in person

Date of Trial : 25 and 26 May 2016
Date of Summing Up : 26 May 2016

SUMMING UP

- [1] Madam and Sir, we have now come to the stage of the trial where it is my duty to sum up the evidence to you and to direct you on the law. You will then be required to deliberate together and each of you must give a separate opinion whether the accused is guilty or not guilty of the charge.
- [2] Our functions have been and remain quite different throughout this trial. The law has been my area of responsibility and I must now give you directions as to the law which applies in this case.

When I do so, you must accept those directions and follow them.

- [3] The facts of the case are your responsibility. You will wish to take into account the argument in the speech made by the prosecutor and the closing words said to you by the accused, but you do not have to accept what they say. Equally, if in the course of my evidence I appear to express any views concerning the facts or emphasize a particular aspect of the evidence, do not adopt those views unless you agree with them and if I do not mention something which you think is important you should have regard to it and give it such weight as you think fit. When it comes to the facts of this case it is your judgment alone that counts.
- [4] In arriving at your conclusions you must consider only the evidence you heard in this case. You must disregard anything you heard from friends, relatives or through any media outlet about this case. You must ignore any suggestions or advice made to you by anyone, no matter how well meaning it may be.
- [5] It is the Prosecution's case that the cultivation was being done by the accused. He was not present at the time of the raid, but they say that circumstantial evidence is sufficient enough to prove his guilt.
- [6] I must direct you that circumstantial evidence is strong evidence but it is important that you approach it with care. You must consider whether it does indeed prove the guilt of the accused or if on the other hand the evidence reveals any other circumstances which may be sufficiently strong to cast doubt on the Prosecution case. And we must not speculate on the

evidence and let speculation get in the way of assessing the circumstances.

- [7] There will be no more evidence. You are entitled to draw an inference that is to come to common sense conclusions based on the evidence which you accept, but you must not speculate about what evidence there may have been or allow yourselves to be drawn into speculation.
- [8] In assessing the evidence you are at liberty to accept the whole of a witness' evidence or accept part of it and reject the other part or reject the whole. In deciding on the credibility of any witness you should take into account the manner in which the witness gave evidence. Was he or she evasive? How did he or she stand up to cross-examination? You are to ask yourselves was the witness honest and reliable?
- [9] As assessors you were chosen from the community. You individually and together represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in the trial. You are indeed expected and indeed required to use that common sense and experience in your deliberations and in deciding upon any proposition put to you and in evaluating the evidence in this trial. You are to ask yourselves whether it accords with common sense or is it contrary to common sense and experience.
- [10] I ask you both to please put aside any feelings of prejudice you may have against certain people and to put aside any sympathy you might feel for anyone connected with the trial. This Court room has no place for sympathy or prejudices - you must arrive at your opinions calmly and dispassionately. In this regard if you have strong feelings about the abuse of illicit drugs or the

culture surrounding drugs you must put that from your mind. You must only be concerned with the evidence that has been put before you and nothing else.

- [11] In this case, as in every case in Fiji, the Prosecution must prove that the accused is guilty. He does not have to prove his innocence. In a criminal trial the burden of proving the accused's guilt is on the prosecution.
- [12] How does the prosecution succeed in proving the accused's guilt? The answer is - by making you sure of it. Nothing less will do. If after considering all the evidence you are sure that the accused is guilty you must return an opinion of "guilty". If you are not sure your opinion must be "not guilty".
- [13] The accused in this case is charged with cultivating cannabis sativa. You can take it from me that cannabis sativa is an illicit drug. For you to find the accused guilty of this offence, you have to find proved to you beyond reasonable doubt that-
- (i) it was this accused, who
 - (ii) took some part in the cultivating or growing of the plants that were seized by the Police on the 6th January 2015.
- [14] You will bear in mind that to prove the charge the State does not have to prove that the accused grew the plants from seed to maturity, just that he did play some part in the process of cultivation.
- [15] The evidence has been very brief and I will not go over it in much detail. You heard that a party of Police Officers went to Natovotovo Settlement on the 6th January 2015. They awoke one Daniel and presenting him with a search warrant searched

both the house he was staying in and the house belonging to the accused nearby. The accused was absent.

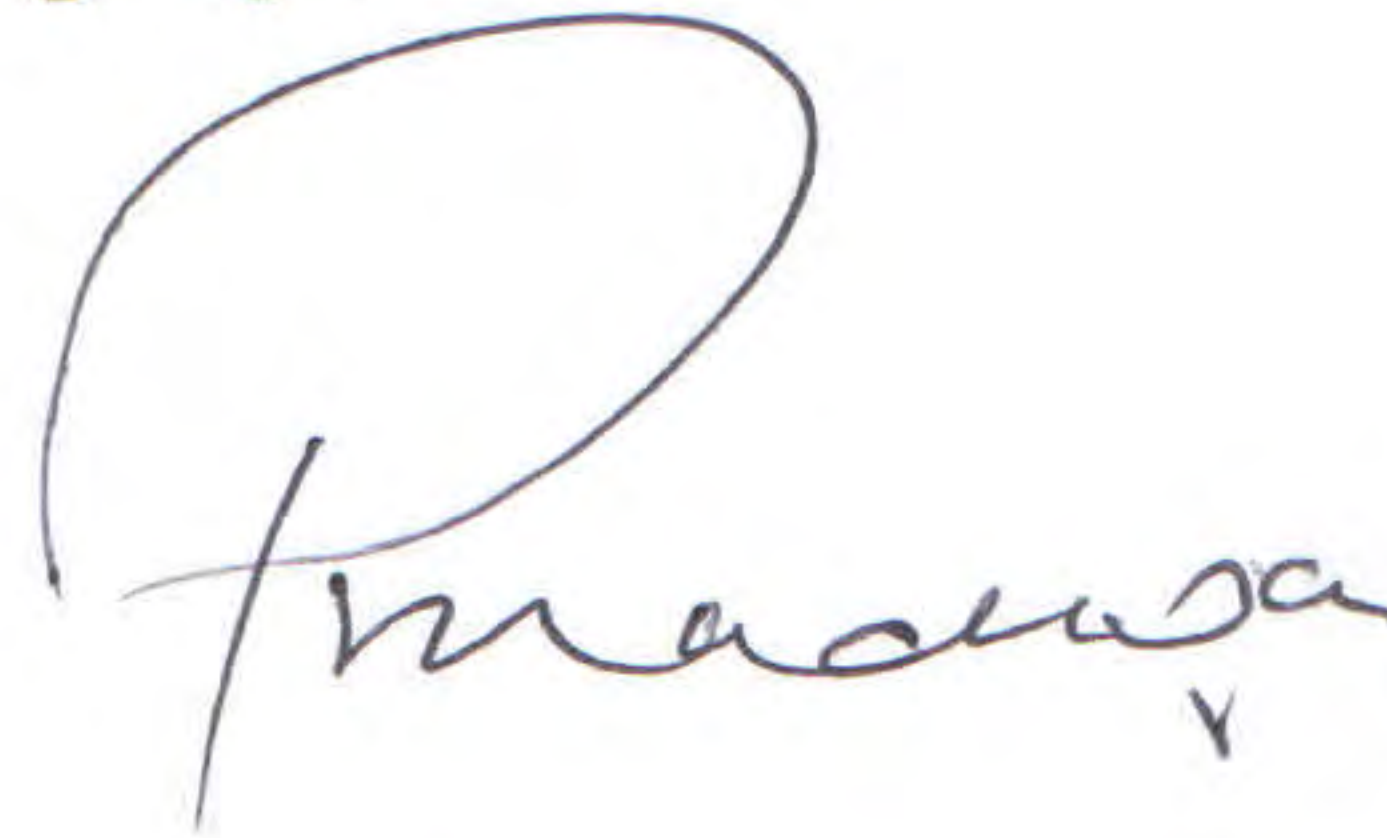
- [16] In the second house they found seeds and dried leaves wrapped in newspaper. Daniel escorted some of the officers to a patch of land where they found a plantation of plants thought to be marijuana. They uprooted these plants and seized them as exhibits. There were 41 plants. They were subsequently examined by the Government Chemist who told us that she tested the 45 samples given to her and they were indeed cannabis sativa weighing 10kg or 1,000 grammes.
- [17] There appears to be a discrepancy highlighted in the evidence between the number of plants seized and the date of examination, either the 6th or 7th of January. However I direct you not to trouble yourselves about this: the real evidence came from the Government Chemist herself in that she told us she examined all the exhibits given to her by Viliame of the Tukavesi Police and she found on the 7th January that it amounted to 10kg of cannabis sativa. It is the evidence in Court that is the primary evidence.
- [18] At the end of the prosecution case you heard me tell the accused what his rights in defence are. He could remain silent or he could give evidence. He elected to give evidence and therefore that is evidence for you to consider. Even though he has given evidence that does not relieve the State from their burden to prove to you the case beyond reasonable doubt. However it could be that the accused has said something that may cause you to doubt the State evidence. If that is the case then you will find him not guilty.

- [19] In his evidence the accused said that he knows nothing about this charge He wasn't at the village when the raid took place. He says that he hasn't had the opportunity to see the drugs seized. His nephew who led the party to the farm has been brainwashed by the Police. He said that he will admit nothing and that there is no hard evidence against him, only words. He grew root crops in the village but in a different place to where the plants were seized He has no knowledge of this matter whatsoever and anyway the Police contradicted themselves.
- [20] Well that is his evidence and you will take it into account.
- [21] The accused also wished to call two alibi witnesses from the Prison. Unfortunately they were not available so in fairness to the accused I summarize their evidence here. The accused tells us that his witnesses would say that from the 2nd October 2014 until 7th January 2015 he was on the small island of Yadua in Bua.
- [22] I must direct you Madam and Sir that when there has been shown to be a contradiction between what a witness says in a statement and what he says in Court, then the evidence in Court is the primary evidence. However if you think that the contradictions are too numerous or too fundamental then you might think that you cannot rely on that particular witness. I don't think you will find and such major contradictions in this case but it is a matter for you.
- [23] Well Madam and Sir, that was the end of all the evidence and it is on all of that evidence nothing less nothing more that you are to decide whether the accused is guilty or not guilty of cultivating this 10kg of illicit drug.

[24] Your possible opinions are guilty or not guilty and as I have said it would be best if you both agree, but you are allowed to disagree.

[25] That is all I wish to say. Please tell a member of my staff know when you are ready and I will reconvene the Court but before you go I will ask counsel if there is anything he wishes me to add or alter in this Summing Up.

[26] Counsel?



P. K. Madigan
Judge



At Labasa
26 May 2016