

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 287 OF 2015S**

**STATE**

**vs**

**ACURA QARANIVALU**

**Counsels** : **Mr. M. Vosawale and Mr. E. Samisoni for State**  
**Accused in Person**  
**Hearings** : **29 May, 1, 2, and 5 June, 2017**  
**Summing Up** : **6 June, 2017**

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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 Counsel and the accused have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State Counsel and accused, 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 3 January 2012 at Kadavu in the Southern Division, without lawfully authority, cultivated 11 kilograms of cannabis sativa plants?

**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 seeds, 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. Upon information received, D/Sergeant 1739 Adriu Naitukuni (PW1) led a team of 5 police officers to execute a search warrant at one Apakuki's house at Vuravu Settlement. It was the 3<sup>rd</sup> of January 2012. According to the prosecution, information was received that people were cultivating cannabis sativa plants in the area. According to the prosecution, at Apakuki's house, the police saw 24 marijuana plants, belonging to the accused, been hung out in the open to dry. They seized the plants and later took it by fibre glass boat to Kadavu Police Station.
15. Enroute to Kadavu Police Station, the police saw and arrested the accused in another fibre glass boat. They also took him to Kadavu Police Station. The 24 marijuana plants were packed, tagged and kept in the exhibit room, to be transported later to Koronivia for analysis. On 7 January 2012, the accused was caution interviewed by D/A Corporal 3036 Amani Satuwere (PW5) at Kadavu Police Station. He was given his legal rights, formally caution and given the standard rest breaks. During the interview, the accused admitted cultivating cannabis sativa plants, with others, in Kadavu.
16. On 9 January 2012, Sergeant 1785 Sakaraia Tuberi (PW4) brought the above mentioned marijuana plants from Kadavu Police Station, to Nabua Police Station and then to Koronivia Research Station for analysis. The government analyst, Ms. Miliakere Nawaikula (PW6), analysed the plants and found the same to be cannabis sativa, and it weighted 11 kilograms. After the analysis the drugs were returned to PW4 by PW6 for safekeeping. On 16 January 2012, according to the prosecution, the Chief Magistrate ordered the above drugs to be destroyed, and the same were later destroyed accordingly.
17. 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**

18. On 1 June 2017, the first day of the trial proper, the information was put to the accused. He waived his right to counsel on 31 August 2016. He choosed to represent himself. That was his right. 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 choosed to give sworn evidence and called three witnesses, in his defence. That was his right.

19. The accused's case was simple. On oath, he denied the allegation against him. He said, he went to Kadavu in 2011 for the Christmas holiday and went to visit his defacto-wife. He admitted he was arrested by police after the New Year in 2012. In cross-examination, he admitted been caution interviewed by police on 7 January 2012. However, he denied admitting the offence to police. He said, he had been wrongly accused of this matter. He said, the interview statements were not his, and the police took the same by force. He said, he did not sign the interview notes. He appeared to say that the caution interview statements were nothing but a fabrication by police.
20. Because of the above, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the defence.

#### H. ANALYSIS OF THE EVIDENCE

##### (a) Introduction:

21. 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, 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 we will discuss the accused's case, and finally the need to consider all the evidence.

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

22. The State's case against the accused was based on the direct verbal evidence of four police officers and an ex-police officer, that is, D/Sergeant 1739 Adriu Naitukuni (PW1); Waisale Saru (ex-police officer and PW2); WPC 3623 Taraivini Vusoni (PW3); Sergant 1785 Sakaraia Tuberi (PW4); and D/A Corporal 3036 Amani Satuwere (PW5). The State's case also relied on the direct evidence of the government analyst, Ms Miliakere Nawaikula (PW6).
23. D/Sergeant Adriu (PW1) said, on 3 January 2012, he received information that people were cultivating marijuana in the Vuravu Settlement area. He organized a party of 5 police officers to execute a search warrant on one Apakuki's house in the area. He took his party from the

Kadavu Police Station to Apakuki's house via a fibre glass boat. At the house, they executed the search warrant. PW1 said, they found 24 marijuana plants been hung up to dry at Apakuki's house. PW1 said, according to the information he received, the 24 plants were said to belong to the accused. PW1 said, they seized the plants and took the same to Kadavu Police Station.

24. Waisale Saru (PW2) next gave evidence. PW2 said, he was a police officer on 3 January 2012, and was part of the team that raided Vuravu Settlement that day. PW2 said, his team went to a farm at Vuravu Settlement. At the farm, they uprooted numerous marijuana plants. PW2 said, they received information that some marijuana plants had been uprooted and dried at a nearby house. PW2 said, they later went to the house and saw 24 marijuana plants been dried. PW2 said, they later seized the 24 plants and took them to Kadavu Police Station. It would appear that these were the same marijuana plants PW1 was talking about above.
25. Enroute to Kadavu Police Station on 3 January 2012, PW2 said they saw the accused in another fiber glass boat. They arrested him and took him also to Kadavu Police Station. At Kadavu Police Station, the drugs and the accused were handed over to the Station Orderly. WPC 3623 Taraivini Vusoni (PW3) said, on 3 January 2012, she received the abovementioned 24 marijuana plants and 6 branches of dried leaves from PW1. PW3 said, she packed, tagged and stored the plants in the exhibit room for transfer to Suva. PW3 said, she was the exhibit writer and her job was to look after the exhibits until they were produced in court.
26. Sergeant 1785 Sakaraia Tuberi (PW4) said, on 9 January 2012, he took the 24 plants stored in the exhibit room to Suva for analysis. PW4 said, he and other police officers escorted the above drugs from Kadavu Police Station, to Nabua Police Station and then to Koronivia Research Station on the same day. The drugs were handed over to the Government Analyst, Ms. Miliakere Nawaikula (PW6), for analysis. PW6 said, she analysed the drugs on the same day and found them to be cannabis sativa and they weighed 11 kilograms. PW6 tendered her Certificate of Analysis as Prosecution Exhibit No. 2. The drugs were handed back to police after the analysis.
27. PW4 said, on 16 January 2012, the Chief Magistrate ordered the above drugs to be destroyed. PW4 said, he was present when the same were burnt at the incinerator at the Suva wharf.

28. D/Acting Corporal 3036 Amani Satuwere (PW5) said, he caution interviewed the accused at Kadavu Police Station on 7 January 2012 in the English language. He said, he asked the accused 57 questions and he gave 57 answers. He said, the interview started at 9.02am and it concluded at 1.16pm. PW5 said, the accused was given his legal rights, his right to counsel, the standard caution and his rest, smoke and toilet breaks. PW5 said, he did not assault or threatened the accused during the interview, or while he was in his custody. During the interview, PW5 said, the accused confessed to the crime. The interview notes were tendered in evidence as Prosecution Exhibit No. 1. As to his alleged confession, please refer to questions and answers 21, 23, 25, 28, 29, 30 to 34, 44, 45, 47, 54 and 55 of Prosecution Exhibit No. 1.

29. When considering the above confessional 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.

30. If you find the above prosecution's witnesses' evidence credible, and you accept their version of events, you must find the accused guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.

**(c) The Defence's Case:**

31. On oath, the accused denied the allegation against him. He said, he had been wrongly accused of this crime. He said, he only went to Kadavu to celebrate Christmas in December 2011 and to see his defacto wife. When cross examined by prosecution, he denied ever admitting the crime to police. He said, he was not cultivating marijuana plants at the material

time. He admitted he was caution interviewed by police on 7 January 2012. He said, he didn't admit the crime to police when interviewed. He said, he did not give his interview statements voluntarily, as he was forced to do so. He said, the interview notes were not his. He said, the signatures in the interview notes are not his. If you find the accused's version of events credible, and you accept the same, then you must find him not guilty as charged. If otherwise, then you must find him guilty as charged. It is a matter entirely for you.

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

32. The prosecution called 6 witnesses, 4 police officers and two civilians. The defence called 4 witnesses, which included the accused himself and three civilians. The details of these witnesses' evidence are still fresh in your mind, and you must consider and compare all the evidence together. Depending on how you judge each witness's credibility, you are entitled to accept all of a witness's evidence or just some of it, or to reject the whole of a witness's evidence or just some of it. You are the judge of fact. If I fail to emphasise on a particular witness's evidence, you are entitle to take it on board, if you consider it important. However, consider all the evidence together.

I. **SUMMARY**

33. 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.
34. Your possible opinions are as follows:
- (i) Unlawful Cultivating of Illicit Drugs : Guilty or Not Guilty
35. 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** : **Accused in Person**