

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
Hearing : **29 May, 2017**
Ruling : **29 May, 2017**
Written Reasons : **7 June, 2017**

WRITTEN REASONS FOR VOIR DIRE RULING

1. The accused was charged with “unlawful cultivation of illicit drugs”, contrary to section 5(a) of the Illicit Drugs Control Act 2004. It was alleged that, on 3 January 2012, at Kadavu in the Southern Division, without lawful authority, he cultivated 32 plants of cannabis sativa, an illicit drug, weighing 11 kilograms.
2. During the police investigation, the accused was caution interviewed by police at Kadavu Police Station on 7 January 2012. In his caution interview statements, he allegedly admitted the offence. He was formally charged by police on the same day. He again allegedly admitted the offence. In a voir dire hearing on 29 May 2017, he formally challenged the admissibility of the above alleged confessions, on the grounds that, he was forced to give the caution and charge statements, and the statements were nothing but a police fabrication.

3. The police called 6 witnesses, 5 police officers and 1 ex-police officer. The accused choose to remain silent and called no witness. Altogether, there was 6 witnesses, on whose evidence, the court will have to make a decision. I heard the parties on 29 May 2017, and later ruled that the accused's caution interview and charge statements were admissible evidence, and may be used in the trial proper. However, its weight or value will be a matter for the assessors. I said, I would give my reasons later. Below are my reasons.
4. 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 listened to and considered the evidence of all the 6 prosecution witnesses' evidence. The police caution interview officer said the accused was given all his rights, his right to counsel and was formally cautioned during the interview. He was given the standard rest and washroom break. After the interview, he was formally charged. The charging officer said he was given all his rights.
6. The arresting police officer, the caution interview officer and the charging police officer said they did not assault or threaten the accused to give his statements, and neither did they assault or threaten him while he was in their custody. They said, the accused co-operated with police and he made no

complaints to them. I take judicial notice of the Magistrate Court record. When the accused first appeared in the Magistrate Court on 10 January 2012, he made no complaint to the Magistrate of any untoward police behaviour.

7. The accused choose to remain silent in the voir dire hearing.
8. After looking at all the evidence, I ruled the accused's caution interview and charge statements as admissible evidence, but its weight and value, are matters for the assessors to decide in the trial proper. The above are my reasons for my ruling on 29 May 2017.



Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva
Solicitor for Accused : Accused in Person