

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 05 of 2016

STATE

v

NAVINESH NIRMAL PRASAD

Counsels: Mrs. D. Kumar for the State
Mr. A. Sen for the Defendant

Dates of Hearing : 16 - 20 July 2018
Date of Summing Up : 23 July 2018
Date of Judgment : 24 July 2018

JUDGMENT

1. Ravinesh Nirmal Prasad ("the accused") has been tried on one count of possession of illicit drugs and two counts of cultivation of illicit drugs.
2. Three assessors returned after trial with unanimous findings of not guilty on each charge.

3. The prosecution case alleged that on the 7th February 2016, a party of police from 3 Northern Division stations, raided the home of the accused and found a small amount of dried marijuana leaves and a tiny amount of marijuana seeds.
4. It was further alleged that the accused then told the officers that he was cultivating plants some distance from the house, and that he was willing to take them there. He did in fact take the officers to the two sites and showed them 11 mature plants at one site and 8 small plants at another site. He identified them as marijuana plants.
5. It is alleged further by the State that after the up-rooted plants and the accused were delivered to the Seaqaqa Police Station, he was interviewed under caution. In the course of that interview (the record of which was admitted into evidence by this Court after a voire dire) the accused is purported to have confessed to growing the plants which he claimed were marijuana plants. He also admitted possession of part of the exhibits found in his bedroom.
6. The exhibits were all examined by the Police Forensic scientist and the weight of the drugs and the illicit nature of them were certified by her and are the weights and drug referred to in the charges.
7. The accused gave evidence in his own defence after a no case to answer submission was rejected.
8. He told the Court that when he was awoken at about 5am on the 7th he was ambushed by about 20 officers who forced their way into his house without saying why they were there and without showing him a search warrant. His room was searched

and he claimed that the items found were not his. When he denied knowledge of the items produced he said that he was assaulted by being slapped and pushed to the wall. He was then led to places that the Police knew about and where there were marijuana plants growing. He had never been to those places before and knew nothing about the plants. He never saw the plants again after they had been uprooted.

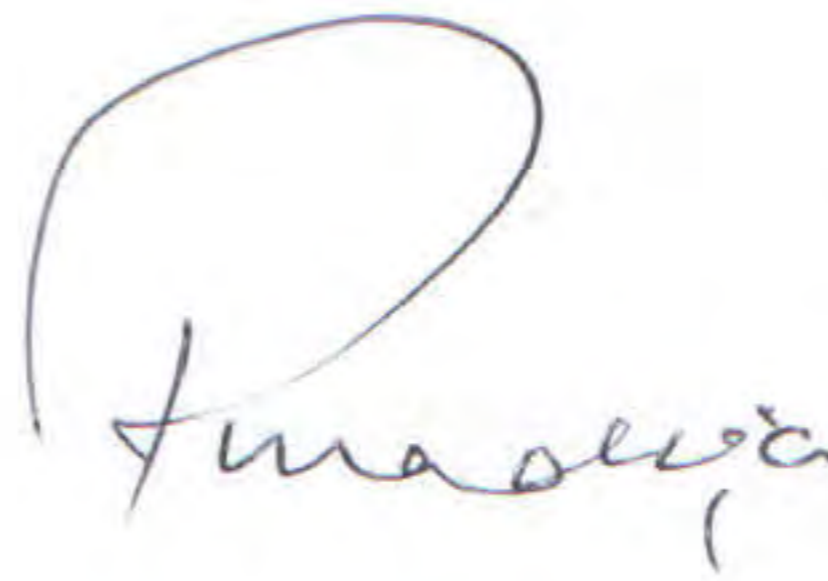
9. The accused said that his interview was a sham. He was frightened and scared of further assault. He was told what to say by the Police and he was forced to sign it. Moreover his standard of English was poor and he wasn't aware that he could be interviewed in Hindi. The confessions were definitely not his but in his fear he gave the answers that the Police wanted him to give.

Analysis

10. It was quite apparent during trial that the case had been very poorly prepared. Statements were missing and not disclosed and the "bedroom" exhibits were missing.
11. The officers gave evidence which in many respects contradicted each other and some witnesses were not adequately prepared to give evidence. Not one of them was able to refer to a notebook or other notes to refresh his memory. Photographs were taken on the team leader's mobile phone but were never properly developed nor produced at trial.
12. Some witnesses expanded on their original evidence adding undisclosed evidence to the prejudice of the accused.

13. Most importantly there was no evidence as to the chain of evidence relating to movement of the exhibits. It was "assumed" that the plants seized were delivered to the station and kept there to be shown to the suspect in his interview but there was no evidence of that. No detail was given as to who carried the plants out from the farm or who took them back to the station or who received them at the station and recorded them as exhibits.
14. There was no evidence given as to the production of plants before the chemist or her Superior nor of the weighing of the plants. The chemist is not a "Government" chemist in terms of section 36 (1) of the Illicit Drugs Control Act and as a result her Certificate is not prima facie evidence of the facts stated therein. The only manner therefore that her evidence could be received is in strict compliance with the rules of evidence in relation to movement of the exhibits tested and those rules were not complied with.
15. Given the terrible preparation of this prosecution, or the lack of it, and given the poor way that evidence against the accused was adduced before me coupled with a total lack of evidence relating to movement of the exhibits, it would be dangerous to convict the accused on the evidence.
16. The Court cannot be sure beyond reasonable doubt that the accused was treated fairly or sure that the drug samples tested were in fact those seized at the plantations or in the house.
17. What did seem at first blush an overwhelming case against the accused became a doubtful case because of the break in the chain of evidence relating to the drugs and because of the sloppy way in which the case was prepared and presented.

18. The Court has no option but to agree with the assessors unanimous opinions.
19. The accused is found not guilty on each count and is acquitted accordingly.
20. That is the judgment of the Court.



P.K. Madigan
Judge



At Labasa
24 July 2018