

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 116 of 2015

STATE

V

SOSICENI TOA

Counsel: Ms. R. Uce for the State.
Ms. U. Baleilevuka for the Accused.

Dates of Hearing: 27, 28 November 02, 03, 04, 05, 06, 10, 13
December, 2019

Closing Speeches: 17 December, 2019

Date of Summing Up: 18 December, 2019

SUMMING UP

Ladies and Gentlemen Assessors

1. It is now my duty to sum up this case to you.

ROLE OF JUDGE AND ASSESSORS

2. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of facts, however, which witness to accept as reliable, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. If I do not refer to

a certain portion of evidence which you consider as important, you should still consider that evidence and give it such weight as you wish.

3. So, if I express an 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 facts.
4. You decide what facts are proved and what inferences you properly draw from those facts. You then apply the law as I explain it to you and form your own opinion as to whether the accused is guilty or not.
5. State and Defence Counsel have made submissions to you about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsel in this case. Their submissions were designed to assist you as judges of facts. However, you are not bound by what they said. You can act upon it if it coincides with your own opinion. As representatives of the community in this trial it is you who must decide what happened in this case and which version of the facts to accept or reject.
6. You will not be asked to give reasons for your opinions and your opinion need not be unanimous. Your opinions are not binding on me but it will assist me in reaching my judgment.

BURDEN OF PROOF AND STANDARD OF PROOF

7. As a matter of law, the burden of proof rests 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 or she is proven guilty.

8. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused person's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion that he is not guilty.
9. Your decision must be based exclusively upon the evidence which you have heard in this court and nothing else. You must disregard anything you must have heard about this case outside of this courtroom.
10. You must decide the facts without prejudice or sympathy to either the accused or the prosecution. Your duty is to find the facts based on the evidence without fear, favour or ill will.
11. Evidence is what the witnesses said from the witness box, documents or other materials tendered as exhibits. You have heard questions asked by the counsel and the court they are not evidence unless the witness accepts or has adopted the question asked.

INFORMATION

12. The accused is charged with the following offences (a copy of the amended information is with you):

FIRST COUNT

Statement of Offence

ATTEMPTED UNLAWFUL IMPORTATION OF ILLICIT DRUGS:

Contrary to section 4 (1) and section 9 of the Illicit Drugs Control Act 2004.

Particulars of Offence

SOSICENI TOA between the 9th day of July 2015 and the 13th day of July 2015 together with persons unknown attempted to import illicit

drugs, namely methamphetamine weighing approximately 20.3kg, into the Republic of Fiji, without lawful authority.

SECOND COUNT

Statement of Offence

ATTEMPTED UNLAWFUL IMPORTATION OF ILLICIT DRUGS:

Contrary to section 4 (1) and section 9 of the Illicit Drugs Control Act 2004.

Particulars of Offence

SOSICENI TOA and other persons unknown between the 17th day of May 2015 and the 25th day of July, 2015 attempted to import illicit drugs, namely methamphetamine weighing approximately 79.3kg, into the Republic of Fiji, without lawful authority.

13. From the information filed you will note that the accused faces two counts of attempted unlawful importation of illicit drugs. You are to consider the evidence in respect of each count separately from the other. If you find the accused guilty for one count, that does not mean he is guilty of the other count as well.
14. A person commits the offence of unlawful importation of illicit drugs if:
 - a) A person;
 - b) without lawful authority (proof of which lies upon that person);
 - c) imports;
 - d) an illicit drug.
15. In this case the accused is charged with two counts of attempted unlawful importation of illicit drugs. To prove the offences of attempted unlawful importation of illicit drugs the prosecution must prove the following elements of the offences beyond reasonable doubt:

- a) The accused;
 - b) without lawful authority;
 - c) attempted to import;
 - d) an illicit drug.
16. The first element of the offences of attempted unlawful importation of illicit drugs is concerned with the identity of the person who allegedly committed the offences.
17. In respect of the second element of without lawful authority - a person acts with lawful authority in relation to an illicit drug if that person has been prescribed the drug on medical grounds or the person's lawful profession involves administration of an illicit drug. There is no evidence before this court to suggest that the accused has acted with lawful authority in this case.
18. The third element is of attempt to import. Before you are satisfied of this element, you must be sure of two things:
- a) the accused intended to bring into Fiji an illicit drug; and
 - b) With that intention he did something which was more than merely preparatory for committing that offence. It is for you to decide whether what the accused did was more than merely preparatory.
19. In law to import means to bring or cause to be brought into Fiji and is a continuing process including any stage thereof until any item reaches the intended recipient. Also as a matter of law, I must direct you that methamphetamine is an illicit drug and in this trial there is no dispute that the drugs were methamphetamine and the respective weight of the drugs were as per the information filed which is part of the amended admitted facts.
20. The prosecution is alleging that the accused between 9th day of July 2015 and the 13th day of July 2015 intended to import an illicit drug

into the Republic of Fiji without lawful authority namely methamphetamine weighing approximately 20.3 kg, as per the first count and between the 17th day of May 2015 and the 25th day of July, 2015 the accused intended to import into the Republic of Fiji an illicit drug without lawful authority namely methamphetamine weighing approximately 79.3kg, as per count two.

21. In regards to whether the accused had intended to import an illicit drug into Fiji as alleged it is not possible to have direct evidence regarding the accused person's state of mind since no one can look into the accused's mind and describe what it was at the time of the alleged offending. However, you can construe the state of mind of the accused from the facts and circumstances you would consider as proved.
22. You should consider all the evidence and draw appropriate inferences to ascertain whether the accused had the intention to import illicit drugs namely methamphetamine on two occasions that is from 9th July, 2015 to 13th July, 2015 weighing approximately 20.3 kg and from 17th May, 2015 to 25th July, 2015, weighing approximately 79.3 kg into Fiji without lawful authority.
23. In this trial, the accused has denied committing the offences as alleged accordingly it is for the prosecution to prove beyond reasonable doubt that it was the accused who had intended to import illicit drugs namely methamphetamine without lawful authority as per the information filed and with that intention the accused did something which was more than merely preparatory.
24. In other words, did the accused intend to commit the offences of unlawful importation of illicit drugs namely methamphetamine into Fiji, in which case he is guilty of attempted unlawful importation of the illicit drugs or that he only got ready or put himself in a position or equipped himself to do so, then he is not guilty.

25. The prosecution says that in respect of count one the accused had intended to import a pressure cooker from Mexico in which was concealed illicit drugs namely methamphetamine weighing approximately 20.3 kg without lawful authority. At the Los Angeles Airport the consignment was intercepted by the US Customs and Border Protection Officers whereby the illicit drugs were replaced with sand.
26. The prosecution further says that the accused and the prosecution witness Paula Baravilala Seru went to get the consignment from the Air Terminal Services Bond at the Nadi Airport after the accused paid for the duty imposed, value added tax and charges. According to the drugs analysis report the contents of the pressure cooker was tested which was positive for methamphetamine weighing 20.3kg.
27. Since the consignment was suspicious it was classified as controlled delivery consignment. In Fiji the police were aware of the consignment hence surveillance was conducted to see who the consignee was. It was the accused who collected the consignment which was loaded into the vehicle of the accused.
28. At the airport the accused got suspicious that he was under police surveillance and was being followed, so after leaving the Nadi Airport, the accused hid the consignment in a sugar cane field. If you accept the accused did this, then it is for you to decide whether what he did went beyond merely preparatory.
29. In respect of the second count, the prosecution says the accused had intended to import illicit drugs namely methamphetamine weighing approximately 79.3 kg without lawful authority into Fiji by using the company registration and details of his landlord namely Praneel Reddy and under the guise of importing spare parts the illicit drugs were concealed in the spare parts container.

30. This consignment was also from Mexico, at the Auckland Port, New Zealand the consignment was intercepted, the illicit drugs were removed and replaced with salt by the New Zealand Customs. The Fiji Police was alerted and the consignment was released as part of the control delivery arrangement. According to the prosecution it was the accused who had through some people made payments for the release of the container from Suva wharf and all along it was the accused who was in communication with the customs brokers and the shipper's agent via email address praneelreddy9@gmail.com.
31. If you accept the accused did all this, then it is for you to decide whether what he did went beyond merely preparatory.
32. If you are satisfied that the prosecution has proved all the above elements beyond reasonable doubt then you must find the accused guilty of both or either count of attempted unlawful importation of illicit drugs.
33. If on the other hand, you find that the prosecution has failed to prove any of these elements beyond reasonable doubt then you must find the accused not guilty of both or either count of attempted unlawful importation of illicit drugs.

CIRCUMSTANTIAL EVIDENCE

34. In this case the prosecution does not rely on direct evidence which is why you did not hear from any witness that he saw the accused commit the offences as alleged. The evidence relied upon by the prosecution in this case is known as circumstantial evidence. This means you are asked to piece the story together from witnesses who did not actually see a crime being committed, but gave evidence of other circumstances and events that may bring you to a sufficiently certain conclusion regarding the commission of the alleged offences.

35. A common example of circumstantial evidence is finger print evidence, suppose a person's fingerprints are found on an object at the crime scene, such as a murder weapon. It could be inferred that the person has handled that weapon and had been present at the scene. An inference could be drawn even though there is no direct evidence that the person was seen there.
36. On some occasions, evidence like fingerprints may be the only circumstance relied upon by the prosecution as proof of guilt. However, it is not unusual to find in a criminal trial that evidence is given of a number of facts and circumstances. One witness proves one thing and another witness proves another thing. None of these alone may be sufficient to establish guilt but, taken together, one circumstance building upon the other, they may lead to the conclusion that the accused is guilty of the alleged crimes.
37. This is what the state counsel is asking you to do. She has directed your attention to a number of facts and circumstances which she submits have been proved by the witnesses. Those facts and circumstances were narrated by prosecution witnesses who played a role in this case including documentary evidences such as bill of lading, commercial invoices, packing lists, exchanges of emails, payment of vat added tax, duty and other charges, release and collection of the consignments and so on.
38. In respect of the first consignment that arrived at the Nadi Airport, the prosecution is saying that it was the accused who had attempted unlawfully to import into Fiji a pressure cooker in which was concealed illicit drugs weighing approximately 20.3 kg. However, due to the interception of the consignment at the Los Angeles Airport the contents were replaced with sand. Furthermore, it was the accused who had collected the consignment upon release, and loaded it in his car and then hid it in a sugar cane field to avoid detection by the police.

39. In respect of the second count, the prosecution says the accused used his landlord's tax identification number and company details to attempt unlawfully to import illicit drugs concealed in a container with spare parts. The prosecution further says that it was the accused who was in communication with the customs brokers and shipper's agent from email address of praneelreddy9@gmail.com and upon payment of charges, duty etc. it was the accused who got the consignment released from an email address which showed it was someone else and not the accused.
40. On the other hand, the defence says the accused had ordered the pressure cooker which was for a potential customer in Fiji. In respect of the contents of the pressure cooker the defence says that the accused did not intend to import and/or have any knowledge whatsoever about the contents of the pressure cooker all he knew was that he was importing a pressure cooker.
41. As for the second consignment the accused denies importing any vehicle spare parts, the defence says the documents produced in court does not mention anything about the accused since he was never involved in the importation and the release of this consignment.
42. The defence disputes the facts and circumstances of this case and states that the accused did not intend to unlawfully import illicit drugs or have any knowledge about the contents of the two consignments. Based on the above, the defence submits that no inference of guilt can be drawn from the circumstantial evidence and therefore you should not rely on it.

Ladies and Gentlemen Assessors

43. You must first consider all the evidence and decide what facts have been proved. From those facts you are entitled to draw proper inferences. An inference is a logical supposition from facts that have

been proved. It must not be mere speculation or guess work. It is not sufficient that the proved circumstances are merely consistent with the accused having committed the alleged crimes.

44. To find the accused guilty for the two counts or either of them you must be satisfied so as to be sure that an inference of guilt is the only rational conclusion to be drawn from the combined effect of all the facts proved. It must be an inference that satisfies you beyond reasonable doubt that the accused committed the offences. If the inference to be drawn from the circumstantial evidence falls short of that standard, then your opinion must be that the accused is not guilty.

ADMITTED FACTS

45. In this trial the prosecution and the defence have agreed to certain facts which have been made available to you titled as amended admitted facts.
46. From the admitted facts you will have no problems in accepting those facts as proven beyond reasonable doubt and you can rely on it. The admitted facts are part of the evidence and you should accept these admitted facts as accurate, truthful and proven beyond reasonable doubt.
47. I will now remind you of the prosecution and defence cases. In doing so, it would not be practical of me to go through all the evidence of every witness in detail. Although this trial had lasted for a number of days I am sure things are still fresh in your minds.
48. I will refresh your memory and summarize the important features. If I do not mention a particular piece of evidence that does not mean it is not important. You should consider and evaluate all the evidence in coming to your opinion in this case.

PROSECUTION CASE

49. The prosecution called nine witnesses to prove the charges against the accused.
50. The first witness Amitesh Kumar informed the court that in the year 2015, he was employed as a Customs Broker for DHL Limited at Nadi Airport. As part of his duties he would receive documents sent by his overseas counterparts for the clearance of customers consignments.
51. Upon receipt of the consignment details he would register the customs entry and then inform the customer about the payment of duty, value added tax and the charges incurred before the release of the consignment.
52. On Friday 10th July, 2015 the witness got an email from DHL Los Angeles office about an item arriving in Fiji the next day by flight. He then printed the documents namely the manifest, airway bill and the commercial invoice.
53. On Monday 13th July, the witness called the accused and asked him if the commercial invoice was correct especially the value portion. The airway bill and the invoice showed the item was a pressure cooker.
54. The accused confirmed that the invoice was correct and had asked about the sum of money to be paid by him. The witness requested for the tax identification number of the accused which was given to the witness.
55. After the item was released by the Customs Department the witness again called the accused to provide his photo ID before the release of the consignment. The manifest bearing departure date of 9th July, 2015 was marked and tendered as prosecution exhibit no. 1.

56. The manifest also mentioned the item was a pressure cooker. The second document which was the airway bill was marked and tendered as prosecution exhibit no. 2. The item was sent by Marcan Comercio International from Mexico which was addressed to Mr. Sosiceni Toa, Denarau State, Lot. 27 Riverside Road the phone contact noted was 7077009. The commercial invoice contained the description of the item as a pressure cooker valued at US \$500.00. The commercial invoice was marked and tendered and prosecution exhibit no.3.
57. The witness prepared a customs entry on 13th July, 2015 which was submitted to the Customs Department for the release of the item. The Fiji Revenue and Customs entry dated 13th July, 2015 was marked and tendered as prosecution exhibit no.4.
58. The witness explained the purpose of the customs entry was to register whatever was imported into Fiji so that the Fiji Revenue and Customs Authority collected the correct duty and value added tax.
59. The accused was then invoiced to pay the amount of value added tax, duty and other charges. The DHL Limited tax invoice number D00157631 dated 13th July, 2015 was marked and tendered as prosecution exhibit no.5.
60. The tax invoice was issued to the accused whose phone number was 7077009 and he was to pay the sum of F\$312.53. The accused was called to pay the amount due upon the presentation of his ID card. The accused came and presented his FRCS and FNPF joint ID card. The name on the ID was Sosiceni Toa with tax identification number 200778404. The copy of the FRCS/FNPF joint ID card of the accused was marked and tendered as prosecution exhibit no. 6.
61. Upon payment of the amount due the item was released and an official DHL Limited receipt was issued. The official receipt was marked and tendered as prosecution exhibit no. 7.

62. The proof of delivery was signed by the customer before the item was taken away the delivery date was 13th July, 2015. The DHL Limited delivery sheet was marked and tendered as prosecution exhibit no. 8.
63. In cross examination the witness agreed the item in question was cleared and approved by the Customs Department for release.
64. The second prosecution witness Paula Seru informed the court that in 2015 he was employed by Bio Security Authority of Fiji and he was based at the Nadi Airport as a Bio Security officer.
65. On 13th July, 2015 the witness was on a day off, in the morning he received a call from the accused saying that he was getting a pressure cooker from overseas so the accused requested the witness to accompany him to the airport. The accused is a childhood friend of the witness who called the accused junior. After a few hours the accused came in his car and picked the witness from his home and both went to the Nadi Airport.
66. On the way to the Nadi Airport the accused told the witness that the pressure cooker was from the United States of America. At the DHL office the accused was told to bring his identity card so that all the paper work could be completed.
67. The witness and the accused came out of the DHL office since the witness was working at the airport he saw Police officers Save and Vikash sitting in a car so he went over to chat with them.
68. From the DHL office they brought the consignment into the loading area. It was a wooden box and the label on it stated that it was a pressure cooker. While the accused was talking with the customs agents the accused brought his car and started loading the item into the back of his car.

69. On the way out of Nadi Airport the accused was using his mobile phone and texting someone. The car was stopped at the Legalega Shopping Centre to buy some things for breakfast. The witness went inside the shop while the accused stood beside the car. When the witness came back from the shop and sat in the car the accused had seen a white car like the one in which the police officers were seated at the Nadi Airport car park. The accused asked the witness whether the car was the same one which had police officers in it, to this the witness replied that there were many cars of the same model on the road.
70. The accused then drove the car into the Voivoi Road this road has two access, one road went to Sabeto and another road went to Votualevu. When in the Votualevu Road the accused stopped the car, opened the boot and took the consignment into the sugar cane field and threw it while the witness stayed in the car.
71. When the accused came back from the sugar cane field, he looked frustrated and was saying "fuck" swearing and apologizing. The witness continued asking the accused why he threw the item which had just been released from the customs the accused did not say anything else.
72. The witness told the accused that he has nothing to do with what had happened and that if the accused was doing anything illegal he should own up. From here the accused drove the car to McDonald's to buy some breakfast. At this time, the witness knew that he was at the wrong place and that he was shocked by what he had seen.
73. When both arrived at the house of the witness after about 5 to 10 minutes the police came and took both of them to the Border Police Station. The police officers started asking questions, the witness did not say anything he was looking at the accused who was saying he does not know anything about the consignment.

74. Late afternoon both were taken to the Sabeto Police Station, in the cell the witness told the accused to tell him the truth but the accused only said sorry. When the witness asked sorry for what, the accused continued saying sorry and nothing else.
75. At the Border Police Station, the witness was told that the item that was supposed to be brought into Fiji was methamphetamine. The next day the witness asked to see Police Officer Filipe who was known to the witness.
76. When Filipe came into the Police Station, the witness told the officer where the item was hidden so all went to retrieve the same. The witness was accompanied by Filipe, Vikash was driving the police vehicle and another police officer by the name of Jone. The police officers went into the cane field and brought over the wooden box the accused had hidden in the sugar cane field.
77. The witness came to know from Police Officer Save that when the item was shown to the accused, he was shocked to see the same and had started crying. The item was opened by the police officers in the presence of the witness and the accused when the accused saw the contents he appeared relieved.
78. The witness saw it was a pressure cooker inside the wooden box and inside the pressure cooker was a clear plastic bag containing sand. After this the witness and the accused were taken into different rooms and charged.
79. The witness identified the accused in court and also identified the wooden box, the pressure cooker and the clear plastic bag which contained sand. These items were marked and tendered as prosecution exhibit number 9.

80. In cross examination by the defence counsel the witness agreed that he was also charged with the accused but was granted immunity by the prosecution.
81. The witness also agreed that the accused had cleared the consignment which was from USA and not from Mexico. When the witness met Police Officer Save, he did not tell this officer to follow him and the accused. The witness denied telling the accused to hide the consignment in the sugar cane field.
82. The witness agreed he was told by Police Officer Save the accused was shocked and crying after the wooden box, the pressure cooker and the plastic bag of sand was shown to the accused. The witness also denied that he had set up the accused to be arrested by the police.
83. In re-examination the witness stated that the accused had told him that the consignment was coming from USA. The reason why he told the police where the item was hidden was because he was waiting for the accused to own up and also to tell the police that the witness was not involved but the accused did not do this.
84. The third witness DC 3852 Filipe Ratini informed the court that in 2015 he was based at the Border Police Station at Nadi Airport. On 11th July, 2015 he received information from Transnational Crimes Unit that a consignment from Mexico destined for Fiji which contained methamphetamine had been intercepted by the Customs Department in Los Angeles, U.S.A. This consignment was addressed to one Sosiceni Toa of Denarau Estate, upon this discovery the contents were replaced with sand and sent to Fiji.
85. The consignment arrived in Fiji on 11th July, 2015 on Los Angeles flight at around 0500 hours, awaiting collection at DHL office. On 13th July, 2015 during their briefing session, the information received was that the consignee was coming to pick the consignment. A team of

police officers namely acting Inspector Savenaca Raloga, Detective Constable Aten Prasad, acting Sgt. Vikash and the witness were dispersed near the DHL bond. At about 11am the accused with Paula Seru came and collected the consignment and loaded it into a vehicle.

86. The vehicle was then driven out of the airport into the Legalega Road. The police team got into an unmarked rental car and followed the accused and Paula. The vehicle driven by the accused was at a high speed. The witness and other police officers made numerous searches in the area but were unsuccessful. Finally, they went to the house of Paula Seru who was occupying the Legalega Research Station quarters here the accused was arrested by Savenaca Mara whereas Paula Seru was arrested by Aten Prasad. The vehicle driven by the accused was searched but the consignment was not there.
87. The witness asked the accused about the consignment, the accused stated that on their way to Legalega Road, they had parked the vehicle near the Legalega Shopping Centre when an unknown person came in a vehicle the accused was instructed to open his vehicle and move away when he went back to the vehicle, the consignment was missing.
88. When the witness searched the vehicle of the accused, he found some DHL documents regarding the consignment as per his search list. Upon arrest, the accused and Paula Seru were escorted to the Border Police.
89. The witness was the investigating officer in respect of the first consignment. On 14th July, 2015 at around 14:20 hours Paula Seru informed the witness that he wanted to show the place where the accused had hidden the consignment. The police team was taken to a sugar cane field along Voivoi Road, where the consignment was located and loaded into the police vehicle and taken to the Border Police.

90. This witness in his evidence confirmed all the documents from prosecution exhibit nos. 1 to 8. The witness was able to identify the wooden box which was shown to the accused during his caution interview which contained a pressure cooker and inside the pressure cooker was a plastic bag of sand. According to the witness when the consignment was shown to the accused he just shook his head and said “no”, “no”, “no” and started crying.
91. The witness was the one who had opened the wooden box and checked the contents in the presence of the accused. The witness had signed the consignment, dated and timed it namely 14th July, 2015, 14:35hours.
92. As part of the investigation the witness had uplifted the travel history of the accused from Fiji Immigration. The travel history of the accused was marked and tendered as prosecution exhibit no. 10.
93. According to the travel history, the accused had arrived in Fiji from Nukualofa, Tonga on 10th July, 2015 by flight FJ 216. The witness identified the accused in court.
94. In cross examination by defence counsel, the witness stated that during surveillance he did not see Savenaca Mara meet Paula Seru. The witness agreed he had seen the accused and Paula Seru together lift the consignment into a vehicle. He also agreed from the travel history, the accused had not visited Mexico or the United States of America.
95. The fourth witness acting Inspector Savenaca Mara informed the court that in 2015 he was based at the Border Police Station. On 13th July, the witness was part of the early morning briefing session where information received was that a consignment from Mexico bound for Fiji had been intercepted at the United States of America because it contained illicit drugs. Furthermore, the information was that the

consignee will be coming to pick the consignment that morning, so police surveillance was to be conducted at the Air Terminal Services Bond area where the consignment was kept. The team of Police Officers consisted of Vikash, Constables Filipe, Aten and the witness.

96. The team was also briefed with details of the consignee including the details of the vehicle to be used in the transportation of the consignment. The information was received from the Transnational Crimes Unit, SSP Seru Naiko.
97. A rental car was used as the surveillance vehicle which was parked outside the ATS Bond, police officers were in the surveillance car.
98. The witness saw the accused's vehicle parked at the ATS Bond car park after a while he saw the accused and Paula Seru bring the consignment from the Bond and place it inside the vehicle.
99. Since Paula Seru was known to the witness, Paula had come across to say "hi" to the witness who was standing outside the car at one time. Thereafter, the accused and Paula Seru drove off with the consignment. The witness and his colleagues followed the vehicle driven by the accused but they were unable to catch up since the accused was driving very fast.
100. When the team went to the house of Paula Seru the witness saw the vehicle driven by the accused parked there. The witness approached the accused, identified himself and arrested him after informing him about the reasons of his arrest and after cautioning him. The other officers in the meantime, searched the vehicle after a while the accused and Paula Seru were brought to the Border Police Station. A search warrant was prepared for a search to be conducted at the residence of the accused.

101. After the search, in the evening the witness interviewed the accused. The caution interview was conducted at the CID office with Inspector Vikash present as the witnessing officer. The interview was conducted in the English language, all the rights were given to the accused including his right to consult a solicitor of his choice and/or the Legal Aid Commission. Since the accused was an Australian citizen, counseling was done by a counselor based at the Australian High Commission.
102. Before the interview, the accused had stated that he was not feeling well so the witness suggested that the accused be taken to the hospital. After a while, the accused changed his mind and said that he was ready for the interview.
103. During the interview, there was no inducement, threat, force or assault on the accused he was treated humanely. The accused was cooperative and fine he did not make any complaints. The caution interview of the accused dated 13th July, 2015 was marked and tendered as prosecution exhibit no. 11.
104. When the consignment was shown to the accused he had cried, the witness identified the accused in court.
105. In cross examination the witness agreed that he cross checked the answers given by the accused in his caution interview regarding the text messages and instructions received by the accused in the Blackberry phone. According to the witness the accused was not telling the truth in respect of the text messages and instructions received in the Blackberry phone.
106. The witness agreed the only reason why he arrested the accused was because he was the receiver of the consignment.

107. In re-examination the witness clarified that all gadgets were sent to Cyber Crime Unit but no response was received.

CAUTION INTERVIEW

108. The caution interview of the accused is before you, the answers in the caution interview are for you to consider as evidence but before you accept the answers, you must be satisfied that the answers were given by the accused and they are the truth. It is entirely a matter for you to accept or reject the answers given in the caution interview.
109. It is for you to decide whether the accused made those admissions and whether those admissions are the truth. If you are not sure whether the accused made those admissions in his caution interview then you should disregard them. If you are sure that those admissions were made by the accused, then you should consider whether those admissions are the truth. What weight you choose to give to those admissions is a matter entirely for you.
110. The fifth witness Prishneel Prasad was employed by Carpenters Shipping in the year 2015 as a Freight Clerk.
111. On 18th July, 2015 the witness downloaded the manifest of the vessel coming to Fiji. The manifest contained details of all the containers coming to Fiji, as a matter of procedure the witness also printed out the arrival notice and the invoice and also scanned these documents to be sent to the customers or the nominated customs broker.
112. The witness had also emailed the pre-arrival notice dated 22nd July, 2015 to one Praneel Reddy of Absolute Trading to email praneelreddy@hotmail.com together with two invoices. The email sent to Praneel Reddy dated 22nd July and the manifest dated 18th July, 2015 were marked and tendered as prosecution exhibit numbers 14, 15 and 16.

113. The manifest mentioned the name of the shipper being Marcam Comercio International, Mexico. The name of the consignee was Praneel Reddy, Absolute Trading Ltd., Namaka, Nadi, Fiji. The seaway bill was also sent with the manifest which was prepared by the shipper. According to the seaway bill, the vessel had sailed from Mexico on 17th May, 2015. The seaway bill dated 17th May, 2015 was marked and tendered as prosecution exhibit no. 17.
114. Next day the witness received a call from Praneel Reddy who stated that he has received the documents. Praneel asked how the consignment could be cleared which was for one of his friends. The witness informed Praneel to contact the Customs Department directly.
115. After the 18th of July, 2015 the witness had nothing to do with the consignment. On 6th August, 2015 the witness received an email from customs broker Teijesh Patel who was inquiring about the shipment. The witness responded and attached all the requirements and documents to Teijesh. For the payment of the shipment, Praneel was advised to pay by either cash or bank cheque which was paid in cash by two ITaukei ladies one of whom had identified herself as the wife of Praneel. The two ladies paid for the two invoices sent to Praneel.
116. The email sent by the witness to Teijesh Patel dated 6th August, 2015 at 1:30pm was marked and tendered as prosecution exhibit no. 18.
117. The witness also sent an email on 6th August, to praneelreddy9@gmail.com at 2:10pm giving information about the consignment. The reply received was that the payment will be made directly to Carpenters Shipping the witness had replied that payment was to be either by bank cheque or cash.
118. In cross examination the witness agreed the consignee was Praneel Reddy, Absolute Trading and also during his communication with Teijesh Patel and Praneel Reddy regarding the shipment, the witness did not come into contact with anyone by the name of Sosiceni Toa.

119. The sixth witness Tejjesh Patel informed the court that he is the Chief Operating Officer for D.N. Patel & Co. Ltd., a customs clearance, freight forwarding and cartaging agent.
120. On 6th August, 2015 the witness received an email from the email address praneelreddy9@gmail.com requesting for the urgent clearance of a 20 foot container that had arrived at the Suva Port. Attached with the email was a copy of the Bill of Lading and the supplier's commercial invoice. The witness also received a phone call asking if delivery can be done the same day. The phone call was from a person who said he was Praneel the witness had replied that with the information at hand, it was not possible.
121. The witness asked for the company tax identification number and sent a C45 customs entry form for completion, signature and to be returned to him.
122. The witness received an email with the tax identification number, he logged into FRCA website which showed Absolute Trading, the C45 form was received by the witness on the 7th. The email was received from praneelreddy9@gmail.com.
123. After this, the customs entry was completed in accordance with the commercial invoice. The duty and vat payable was approximately \$7500.00 the witness then sent an email to Carpenters Shipping and also copied praneelreddy9@gmail.com asking about the availability of the container, the charges and if any original Bill of Lading was required.
124. The response received was no original bill of lading was required and the charges to be paid directly to Carpenters Shipping. The witness received a response from Praneel Reddy advising that payment had

been made to Carpenters Shipping the witness then requested for delivery details and address where the container was to be delivered.

125. Since it was late Friday afternoon it was not possible to clear the container from the port this was the last email communication with this email address. Due to the nature of the commodities the container was marked by customs for inspection.

126. Thereafter a phone call was received from Carpenters Shipping advising that the container had been seized by the Fiji Police.

127. The following documents were tendered by this prosecution witness:

a) First Email

Email from praneelreddy9@gmail.com sent to tjdnnp@connect.com.fj dated the 6th August, 2015 subject: customs clearance request, prosecution exhibit no.19;

b) Second email

Email from Teijesh Patel to praneelreddy9@gmail.com sent on the 6th August, 2015 (1:04pm), subject: customs clearance request, prosecution exhibit no. 20;

c) Third Email

From praneelreddy9@gmail.com to Teijesh Patel on 6th August, 2015 at 1:34pm, prosecution exhibit no. 21;

d) Fourth Email

From praneelreddy9@gmail.com dated 7th August, 2015 at 12:04 pm subject: Arrival notice and charges, prosecution exhibit no. 22;

e) Fifth Email

From praneelreddy9@gmail.com dated 7th August, 2015 at 12:16pm sent to Vijay Kumar subject: Bill of Lading, prosecution exhibit no. 23;

f) Sixth Email

From tjdnps to praneelreddy9@gmail.com sent on 10th August 2015 at 2:16pm, prosecution exhibit no. 24.

128. In cross examination the witness agreed based on the document the consignee was Praneel Reddy, Absolute Trading and that there was no mention of Sosiceni Toa. The consignment was from Mexico and since there was no direct route to Fiji the container was discharged in Auckland and then brought to Fiji.
129. The witness agreed that in his police statement he had mentioned Praneel Reddy when he saw Praneel's photo in one of the newspapers. According to the witness Praneel had come to his office 3 or 4 times with a cousin of the witness. The witness agreed the receipt of payment to Carpenters Shipping was sent to him by praneelreddy9@gmail.com.
130. The seventh prosecution witness was Praneel Chandra Reddy who informed the court that in 2015 he was the Director of Absolute Trading Limited. The witness lived with his parents, two children and wife at Malolo, Nadi on the first floor whereas the bottom two flats were let out on rent.
131. One of the flats was occupied by the accused, his wife and three children from March, 2015 till the accused was arrested by police. On one occasion the accused had told the witness that he was in the process of setting up his new ventures in Fiji a sample of some

petroleum additive was shown to the witness by the accused. The accused also told the witness that his family was in the process of packing his furniture from his flat in Australia so the accused needed the assistance of the witness in getting his furniture and household items to Fiji from Australia.

132. The witness agreed to assist by providing a point of contact, his company details and address in Fiji on the condition that it was the responsibility of the accused to take care of the consignment clearance.
133. When the accused went to Australia he messaged the witness stating that his people in Australia were waiting for the company registration and tax identification letter. The witness had the following email addresses praneelreddy@hotmail.com, praneelreddy@yahoo.com and his company email was absolutetrading2012@gmail.com the witness has no other email addresses.
134. After a few days, the accused messaged the witness asking if the witness had received an email from his people in Australia. The witness found an email in his junk mail folder, the email had two attachments namely a bill of Lading and a packing list in some foreign language. The sender's address was in Mexico the accused confirmed it was his shipment and it was truck batteries to get his business started.
135. Later the witness came to know that the accused had been arrested in respect of some imports and exports this prompted the accused to think about the consignment which was on its way from Mexico. As a result he got in touch with a school mate Oveti Lolo who was a Police Officer. The witness was asked to keep quiet and not discuss about the matter with anyone until the shipment arrived into the country.

136. In mid-July, the witness received a call from Carpenters Shipping saying that the consignment had arrived awaiting clearance. Prishneel also sent the witness a pre-arrival notice. The witness told Prishneel that the consignment did not belong to him and he would not be clearing it. The email account in which the witness received his email from Prishneel was praneelreddy@hotmail.com.
137. In late July, the witness received a call from Oveti Lolo to come to the police station regarding the consignment. The witness was arrested and taken to Suva during the interview he was taken to Suva Wharf where the container was opened and he was showed the contents which was mostly motor vehicle parts.
138. After this the witness was charged and remanded. While in remand the witness did confront the accused on more than one occasion and asked him to own up for what he had done. The accused apologized but was adamant that he will not own up to anything.
139. The witness stated that apart from the accused, he did not give his company details to anyone else. The witness did not have any business dealings with D.N. Patel & Co. Ltd, however, the owners were related to his business partner as a result the witness had visited the office of D.N. Patel Ltd a few times before the alleged incident.
140. In cross examination the witness agreed he was one of the co-accused in this proceeding, however, he was granted immunity by the office of the Director of Public Prosecutions and that he was in court to give evidence against the accused. The witness agreed he was going to put all the blame on the accused person.
141. The witness agreed when he received a call from Prishneel, he said the shipment was not his but belonged to a friend. When prosecution exhibit no. 19 being a statutory declaration was shown to the witness, he denied he had signed this document and that the police had not

shown him this document during his caution interview. The witness denied he was lying in court.

142. The witness also denied that he had ordered the shipment from Mexico and that since he got caught he was blaming the accused person.
143. In re-examination the witness stated that he had nothing to do with the consignment from Mexico he further stated that he did the right thing when he came to know what was happening, he reported the accused to the authorities.
144. The eighth witness Serupepeli Naiko informed the court that in 2015 he was the Manager of Transnational Crimes Unit. On 9th July, 2015 he received information that there was an interception of a consignment bound for Fiji at Los Angeles International Airport by the US Customs and Border Protection officers.
145. They had intercepted an industrial pressure cooker which had parcels of methamphetamine concealed at the bottom of the pressure cooker. A test had been conducted on the contents which confirmed the contents to be methamphetamine. The witness forwarded the details of the consignment to Border Police investigators.
146. On 11th July, 2015 information was received that a shipping container carrying illicit drugs from Mexico was destined for Fiji. The details of the container were relayed to the Australian Federal Police Liaison Officers to establish the exact location of the container.
147. It was confirmed that the container was at the Auckland Port in New Zealand. After discussions between law enforcement agencies, it was decided that the container be under International Control Delivery hence there was a substitution of the contents found in the container

the illicit drugs were replaced before the container was allowed to be shipped to Fiji.

148. The witness was the liaison between the Fiji Police Force, New Zealand Customs Services and the USA Customs and Border Protection. The witness also received copies of the drug analysis reports from New Zealand Custom Officers and the USA Customs and Border Protection drugs Analysis. The USA Chemical Analysis Report dated 17th July, 2015 and 20th July, 2015 from South West Laboratory was marked and tendered as prosecution exhibit no. 12.
149. The Certificate of Analysis by the Institute of Environmental Science and Research Ltd, New Zealand dated 6th August, 2015 was marked and tendered as prosecution exhibit no. 13.
150. The final witness was D/Cpl. 3695 Isireli, in 2015 he was temporarily based with the Transnational Crimes Unit. On 30th July, 2015 the witness was instructed to be the investigating officer in relation to the second consignment being a case of an alleged importation of a consignment from Mexico containing illicit drugs.
151. The consignment originated from Mexico namely Marcam International which had departed Mexico on the 17th May, 2015 which transited through the Auckland Port and was due to arrive at the Suva Wharf on 25th July, 2015. The consignment was addressed to one Praneel Reddy of Absolute Trading Limited, Namaka, Nadi. At this time, the two suspects were Praneel Reddy and the accused.
152. As part of the investigations, the witness was able to uplift numerous documents in respect of the consignment. The witness confirmed prosecution exhibit numbers 14 to 24 as documents he had uplifted from Carpenters Shipping, D.N. Patel & Co. Ltd and various email correspondences thereto.

153. When the consignment arrived at the Suva Wharf, Praneel Reddy was arrested. Praneel's caution interview was commenced which was suspended to allow for the inspection of the container.
154. The container was opened in the presence of Praneel and all the contents were photographed. The shipper had built a wooden structure at the entrance of the container like a shelf where the spare parts were nicely stacked and behind it were two pallets. On the pallets were two wooden boxes which contained car batteries. The pallets were concealed at the back of the container which could not be seen when the container was opened.
155. After the wooden boxes were opened, the car batteries had a cover which when opened had a lead metal placed across to avoid detection during scanning. The car batteries did not have the battery components instead there were packets of illicit drugs concealed in the car batteries which were intercepted at the Auckland Port. At the Auckland Port the drugs were substituted with salt.
156. The container was under control delivery which was part of a lawful operation and procedure carried out by Law Enforcement officers especially in consignment of illicit drugs. As a result of this procedure, the consignment of illicit drugs were seized, confiscated and replaced with a substitute of similar substances, of the same weight other than drugs which was monitored by the Law Enforcement officers until it reached its destination.
157. The witness saw there were 5 boxes of car batteries which contained 20 packets of salt that were substituted at the Auckland Port. The 5 wooden boxes with the car batteries were marked and tendered as prosecution exhibit numbers 25 and 26 respectively. The booklet of photographs taken on 31st July, 2015 was marked and tendered as prosecution exhibit no. 27.

158. During the caution interview the witness was told by Praneel Reddy that the consignment was not his, and it belonged to the accused who was his tenant. Praneel was requested by the accused to give his company details and tax identification number to facilitate the importation of his furniture and household items from Australia. Praneel also confirmed that his business had nothing to do with spare parts of vehicles.
159. The email correspondence from D.N. Patel was uplifted after Praneel was interviewed and therefore Praneel was not given the opportunity to explain about those emails that had the address praneelreddy9@gmail.com. The accused was interviewed a few weeks after Praneel but he had remained silent throughout the interview.
160. In cross examination the witness admitted that he did not investigate the email address praneelreddy9@gmail.com and also that Praneel Reddy was the receiver of the consignment as per the documents. The accused's mobile phone was seized and there were some text messages between the accused and Praneel Reddy.
161. The witness confirmed that all the documents he had uplifted from D.N. Patel and Carpenters Shipping stated the consignee was Praneel Reddy.
162. In re-examination the witness explained the reason why he did not investigate the email address praneelreddy9@gmail.com was because he had received the emails from D.N.Patel & Co. Ltd after Praneel had been interviewed.

ACCOMPLICE EVIDENCE

Ladies and Gentlemen Assessors

163. The prosecution relies on the evidence of Paula Seru in respect of count one and on the evidence of Praneel Anand Reddy in respect of

count two. These witnesses were initially charged with the accused as accomplices, however, both were after sometime given immunity on the basis that they give evidence for the prosecution.

164. The fact that Paula Seru and Praneel Reddy have been given immunity from prosecution means they have nothing to gain from giving evidence which might exonerate them from blame. Nevertheless, there is still a danger in accepting their evidence because they may have given a false account to the police in order to save themselves and to get immunity.
165. In this regard, I must warn you that it is unsafe to convict the accused on the evidence of Paula Seru and Praneel Reddy alone, and without corroboration from other sources. Before you consider whether there is corroboration of Paula and Praneel's evidence, you must ask yourselves whether their evidence is reliable and credible, that is whether it is capable of belief, and then whether you believe the evidence they gave is such that you can rely upon it and accept as being the truth.
166. Corroboration is any evidence which comes from independent source and which affects an accused person by connecting or tending to connect him or her with the crime in question. Further it must be evidence which implicates an accused person that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the accused committed it.
167. Please exercise care when you are evaluating the evidence of Paula and Praneel. You must look for corroboration of their evidence because it is unsafe to find the accused guilty without such evidence. It is a matter for you to decide whether you accept the evidence of Paula and Praneel as being corroborated by independent evidence and whether you accept the evidence of Paula and Praneel as being reliable and credible.

168. The prosecution in respect of count one says the evidence of Paula Seru is corroborated by the evidence of Amitesh Kumar that the accused confirmed the consignment was his and upon being satisfied that the accused was the person who had imported the pressure cooker payment was received and the consignment was released to the accused.
169. DC 3852 Filipe Ratini had received information from Transnational Crimes Unit that a consignment from Mexico containing methamphetamine had been intercepted by Customs Department in Los Angeles, U.S.A. This consignment was addressed to one Sosiceni Toa of Denarau Estate upon this discovery, the contents were replaced with sand and sent to Fiji.
170. The consignment arrived in Fiji on 11th July, 2015 on the Los Angeles flight at around 0500 hours, awaiting collection at DHL office. The accused with Paula Seru collected the consignment and lifted it into a vehicle.
171. The vehicle was driven out of the airport into the Legalega Road. The police team got into an unmarked rental car and followed the accused and Paula. The vehicle was driven by the accused at high speed. They went to the house of Paula Seru here the accused was arrested by Savenaca Mara whereas Paula Seru was arrested by Aten Prasad. The vehicle driven by the accused was checked but the consignment was not there.
172. When the witness searched the vehicle of the accused, he found some DHL documents regarding the consignment as per his search list. Upon arrest, the accused and Paula were escorted to Border Police.
173. On 14th July, 2015 at around 1420 hours Paula Seru informed the witness that he wanted to show the place where the accused had hidden the consignment. The police team was taken to a sugar cane

field along Voivoi Road, where the consignment was located and loaded into the police vehicle and taken to the Border Police.

174. The witness was able to identify the wooden box which was shown to the accused during his caution interview which contained a pressure cooker and inside the pressure cooker was a plastic bag of sand. According to the witness when the consignment was shown to the accused he just shook his head and said “no”, “no”, “no” and started crying.
175. Acting Inspector Savenaca Mara had arrested and interviewed the accused. The caution interview of the accused dated 13th July, 2015 was marked and tendered as prosecution exhibit no. 11. In the caution interview the accused had made partial admissions that he had acted upon instructions of some people to save his family.
176. In respect of count two the prosecution says the evidence of Praneel Reddy is corroborated by Prishneel Prasad who informed the court that he had received a call from Praneel Reddy who had told him the consignment was not Praneel’s but for one of his friends.
177. Teijesh Patel the Chief Operating Officer for D.N. Patel & Co. Ltd., had received instructions to urgently clear the 20 foot container that had arrived at the Suva Port. Attached with the email was a copy of the Bill of Lading and supplier’s commercial invoice.
178. After this, the customs entry was completed in accordance with the commercial invoice. The duty and vat payable was approximately \$7500.00 the witness then sent an email to Carpenters Shipping and also copied praneelreddy9@gmail.com asking about the availability of the container, the charges and if any original Bill of Lading was required.

179. All the receipts for the payments made were communicated to the witness by praneelreddy9@gmail.com.
180. Serupepeli Naiko the Manager of Transnational Crimes Unit tendered the drug analysis reports from New Zealand Custom Officers and the USA Customs and Border Protection.
181. D/Cpl. 3695 Isireli, in 2015 was able to uplift numerous documents in respect of the second consignment. The witness confirmed prosecution exhibit numbers 14 to 24 as documents he had uplifted from Carpenters Shipping, D.N. Patel & Co. Ltd and various email correspondences.
182. When the consignment arrived at the Suva Wharf, Praneel Reddy was arrested and caution interviewed which was suspended to allow for the inspection of the container.
183. During the caution interview the witness was told by Praneel Reddy that the consignment was not his, and it belonged to the accused who was his tenant. Praneel was requested by the accused to give his company details and tax identification number to the accused to facilitate the importation of his furniture and household items from Australia. Praneel also confirmed that his business had nothing to do with spare parts of vehicles.
184. This was the prosecution case.

DEFENCE CASE

185. At the end of the prosecution case you heard me explain options to the accused. He has those options because he does not have to prove anything. The burden of proving the accused guilt beyond reasonable doubt remains on the prosecution at all times. The accused chose to give evidence under oath and be subjected to cross examination.

186. I now draw your attention to the evidence adduced by the defence during the course of the hearing. You must take into account what the defence adduced in evidence when considering the issues of fact which you are determining.
187. The accused informed the court that he is an Australian citizen and since 2015 he has been residing in Fiji. He had come to Fiji to invest in a business venture first he resided at Denarau and then went to reside at Malolo, Nadi.
188. In Malolo, the accused rented the flat of Praneel Reddy he lived there for a couple of months. According to the accused, in 2014 he had imported his vehicle through a Freight Forwarder who did everything for him. The accused had ordered a pressure cooker for a potential customer.
189. On 13th July, 2015 the accused was in Nadi when he received a call from one Amitesh of DHL Ltd to pick a package from their office. The accused went to pick the pressure cooker with a friend Paula Baravilala Seru. At the DHL office he gave his identity card and waited for about half an hour. At this time Paula was outside after the consignment was released the accused and Paula left the Nadi Airport.
190. The reason why they hid the consignment in the sugar cane field was because he was scared and he will do anything for his family namely his wife and 3 children. The accused paid the fees for the consignment since he was just following instructions. The instructions were to do as he was told, if not they will hurt his family. They knew where his family lived, the school of his children and their daily routine.
191. The accused was receiving instructions through the Blackberry phone which was given to him by an 'unknown' man from New Zealand, which was later taken by the Fiji Police. The accused stated the phone number was 7077009.

192. The accused had received the Blackberry phone when he went to Tonga for the King's coronation he was approached by an unknown man from New Zealand. This man gave the accused a Blackberry phone he had no choice but to accept it. The accused did not report this man to the Tongan Police because of the fear of losing his family. When the accused was in Australia, he had a gambling problem so he borrowed money from a "loan shark" by the name of Alfred and was unable to pay him. The accused had told the police everything about Alfred and about the instructions received but nothing was done. To protect his family, the accused was prepared to do anything.
193. The accused does not know or have any idea how the sender of the pressure cooker had his phone number and his residential address. In respect of the Suva consignment the accused stated that he knew Praneel Reddy who was his landlord but he had never asked Praneel to help him in bringing his furniture from Australia to Fiji.
194. The accused stated that he had no involvement in the Suva consignment. Furthermore, he was also not aware of the contents of the pressure cooker.
195. The accused denied both the allegations saying that in respect of the first count he had no knowledge about the illicit drugs concealed in the pressure cooker. As for the second count, the container of spare parts, the accused says he was never involved in the importation of this consignment.
196. In cross examination by the State counsel the accused stated that the pressure cooker was sent by Marcam International from Los Angeles. The accused agreed the pressure cooker was worth US\$500.00. On 13th July, 2015 he had gone to the house of Paula Seru to pick him, before going to the office of the DHL and that he had not told Paula about the pressure cooker.

197. At the DHL office, the accused had received some documents which he had signed, when it was suggested the documents had stated the pressure cooker was from Mexico, the accused said that he had looked at the FIRCA document twice but he did not give much attention to the minor details such as which country the pressure cooker was sent from.
198. When it was put to the accused that he was lying about receiving and acting upon instructions, the accused denied this saying that if the Fiji Police had done their job properly they would have found out more. The accused denied that he knew the content of the pressure cooker was methamphetamine.
199. Outside the DHL office, the accused had seen Paula talking to an ITaukei man, Paula had told him that person was his workmate. It was only when the accused was arrested that he realized that person was a police officer. When he left the airport he did not drive very fast. The accused could not recall that he was texting someone on his phone he agreed he had stopped the vehicle at the Legalega Shopping Centre and that both Paula and the accused had gone into the shop.
200. The accused denied he had stopped the vehicle near a sugar cane field, got off the vehicle, took the consignment out and hid it in the sugar cane field. The accused also denied he was asked by Paula anything about the consignment he also denied apologizing to Paula when both were kept in the police cell after their interviews.
201. The accused denied the pressure cooker shown to him was the same one he had hidden at the sugar cane field he cried when the pressure cooker was shown to him because he realized that Paula and the police officers had set him up and also due to the fear of his family.
202. The accused denied that he was relieved when he was shown the plastic bag of sand in the pressure cooker since he was expecting

methamphetamine instead. The accused maintained he did not know anything about what was inside the pressure cooker.

203. The accused agreed he had lied to the police officers and the reason was because he feared for the loss of his family. The accused denied that the only reason he had lied to the police was because he was caught trying to import illicit drugs into Fiji. The accused stated he cried because he was thinking of his family and the fear of losing them.
204. The accused denied making up a story that his family was under threat, when the allegation in respect of count one was put to the accused, he replied *"he would do anything to protect his family from being hurt."*
205. From April to July, 2015 the accused was renting a flat at Praneel's house with his wife and 3 children he and Praneel did not occasionally meet each other and he did not know what his landlord was doing as his business and at no time they had discussed about any business venture that the accused was interested in setting up.
206. The accused denied he had sought assistance from Praneel in bringing his furniture and household items from Australia. The accused also denied messaging Praneel that he needed Praneel's tax identification number and company registration details and that no such information was received by the accused from Praneel via Praneel's hotmail email address.
207. The accused denied Praneel had asked him that the shipment was from Mexico and his response was that they were truck batteries to get his business started. There was also no confrontation between the accused and Praneel in the remand centre even though they were together at the remand centre and also that he had not apologized to Praneel or was adamant that he would never own up.

208. The accused denied committing the offences as alleged. He also denied having any knowledge that both the consignments contained illicit drugs.
209. In re-examination the accused clarified that the pressure cooker was supposed to be coming from America and that he did not pay any attention to minor details in the documents he had signed. Furthermore, the accused stated that his family was under threat since he owed money to Alfred as a result of his gambling problem. Alfred was a “loan shark” and a dangerous man he had informed the Fiji Police and showed them some emails but the Fiji Police did not do anything.

ACCUSED LIES TO THE POLICE

210. The prosecution also submits that the accused in his cross examination had admitted that he had lied to the police reason being he feared for the life of his family. In respect of count one, the prosecution refers you to the caution interview of the accused in particular to question and answer 195 where the accused had admitted lying to the police about an unknown person picking the consignment of pressure cooker from the boot of his car.
211. The prosecution is asking you not to believe the accused since he had lied to the police. If you are satisfied beyond reasonable doubt that he did, you must then consider why he lied. The mere fact that an accused tells a lie is not itself evidence of guilt.
212. An accused may lie for many reasons, for example to bolster a true defence, to protect someone else, out of panic or confusion. If you think that there is or maybe, some innocent explanation for these lies, then you should take no notice of them. But if you are satisfied beyond reasonable doubt that he did not lie for some such or other innocent reason, then his lie can support the prosecution case.

DURESS

Ladies and Gentlemen Assessors

213. You will also note when the accused was caution interviewed by the police he had told them that he was under threat to do what he did. The accused also repeated this in his evidence as well. This means the accused was saying that he was driven to do what he did by threats to his family and he was prepared to do whatever he could to protect his family.
214. Duress of this kind may be a defence to a criminal charge since it is for the prosecution to prove the guilt of the accused, it is for the prosecution to prove that defence of duress does not apply in this case. It is not for the accused to prove that it does apply.
215. First you must ask yourself whether the accused was driven to act as he did because he genuinely and reasonably believed that if he did not do so, a member of his family would be seriously harmed. If you are sure that this was not the case the defence of duress does not apply and the accused is guilty.
216. However, if you think that this was or may have been the case you must next consider whether a reasonable person, in the accused's situation and believing what the accused did, would have been driven to do what the accused did. By a reasonable person I mean a sober person of reasonable firmness and of the accused's age and sex, that is, a male in his early thirties.
217. The reactions of a reasonable person may or may not be the same as those of the accused himself. If you are sure that a reasonable person would not have been driven to do what the accused did, then the defence of duress does not arise and the accused is guilty. However, if you think that a reasonable person would or might have been driven

to do what the accused did, the defence of duress does apply, and you must find him not guilty.

218. The final question is did the accused take any opportunity to escape from the threats made to his immediate family members, for example by going to the police either in Tonga or in Fiji, which a reasonable person in the accused's situation would have taken but which the accused did not take. If you are sure that he had an opportunity to escape the situation by informing the police and seek their assistance, the defence of duress does not apply and the accused is guilty. However, if you are sure that this defence of duress does apply then you must find the accused not guilty.

219. This was the defence case.

Ladies and Gentlemen Assessors

220. You heard the evidence of all the witnesses. If I did not mention a particular piece of evidence that does not mean it's not important. You should consider and evaluate all the evidence in reaching your opinion.

ANALYSIS

221. The prosecution alleges that in respect of the first count that between the 9th of July, 2015 and the 13th July, 2015 the accused with some unknown persons had attempted to import into Fiji illicit drugs namely methamphetamine weighing approximately 20.3 kg without lawful authority.

222. According to the prosecution the documents tendered in evidence show the name of the accused and his address suggesting clearly that it was the accused who intended to import a pressure cooker from

Mexico with the packets of drugs concealed in the pressure cooker. At the Los Angeles Airport the consignment was intercepted and the contents of the pressure cooker being methamphetamine were replaced with sand.

223. When the consignment arrived at the Nadi Airport, it was the accused who had collected the consignment, loaded it in his car and then hid the consignment in a sugar cane field to avoid detection by the police.
224. The prosecution submits that the conduct of the accused and the evidence before the court shows that it was the accused who had attempted to unlawfully import an illicit drug into Fiji concealed in a pressure cooker and that whatever the accused did was more than merely preparatory.
225. In respect of the second count, the prosecution alleges that between 17th May, 2015 and 25th July, 2015 the accused with some unknown persons had attempted to import into Fiji illicit drugs namely methamphetamine weighing approximately 79.3kg without lawful authority. The accused used his landlord's tax identification number and company details to import illicit drugs under the semblance of vehicle spare parts in a container. The prosecution further alleges that it was the accused who was in communication with the customs brokers and the shippers agent from the email address of praneelreddy9@gmail.com.
226. Thereafter it was the accused who got the consignment released from the customs department after making payments for its release by using an email address which showed it was someone else and not the accused.
227. The prosecution is also asking you to consider the caution interview of the accused which was given by the accused on his own freewill and voluntarily.

228. The prosecution finally submits that the conduct of the accused and the evidence before the court shows that it was the accused who had intended to unlawfully import illicit drugs into Fiji on two occasions. The first attempt was that the drugs were concealed in a pressure cooker and on the second occasion the illicit drugs were concealed in a container of vehicle spare parts and on both occasions what the accused did was more than merely preparatory.
229. On the other hand the accused denies both the allegations. In respect of the first consignment the defence says although the accused had imported the pressure cooker into Fiji he had no intention to unlawfully import illicit drugs in the pressure cooker and/or had any knowledge that the pressure cooker contained illicit drugs.
230. In respect of the second consignment the defence says the accused did not intend to unlawfully import illicit drugs into Fiji he was never involved in this transaction or played any part in respect of this consignment as alleged.
231. The defence also wants you to consider the fact that the accused was acting under duress whereby his family was under threat of serious harm. The accused had told this to the police during his caution interview but the police did not act on his information.
232. Finally the defence is asking you to disregard the evidence of Paula Seru and Praneel Reddy who were accomplices of the accused until they were granted immunity to give evidence against the accused. The defence contention is that the evidence of Paula and Praneel is not corroborated in any material way for you to find him guilty as charged. Furthermore, the defence is asking you to consider the fact that the accused did not go to Mexico or USA but was only importing a pressure cooker for a potential customer in Fiji. For the second consignment the defence is asking you to consider the fact that the accused was never recorded on any of the documents or was involved

in getting the container released or delivered to his address. The defence says the accused did not attempt to unlawfully import any illicit drugs into the country as alleged.

Ladies and Gentlemen Assessors

233. You have seen all the witnesses give evidence keep in mind that some witnesses react differently when giving evidence.
234. Which version you are going to accept whether it is the prosecution version or the defence version is a matter for you. You must decide which witnesses are reliable and which are not. You observed all the witnesses giving evidence in court. You decide which witnesses were forthright and truthful and which were not. Which witnesses were straight forward? You may use your common sense when deciding on the facts. Assess the evidence of all the witnesses and their demeanor in arriving at your opinions.
235. In deciding the credibility of the witnesses and the reliability of their evidence it is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified. You can accept part of a witness's evidence and reject other parts. A witness may tell the truth about one matter and lie about another, he or she may be accurate in saying one thing and not be accurate in another.
236. You will have to evaluate all the evidence and apply the law as I explained to you when you consider the charges against the accused have been proven beyond reasonable doubt. In evaluating evidence, you should see whether the story related in evidence is probable or improbable, whether the witness is consistent in his or her own

evidence or with other witnesses who gave evidence. It does not matter whether the evidence was called for the prosecution or the defence. You must apply the same test and standards in applying that.

237. It is up to you to decide whether you accept the version of the defence and it is sufficient to establish a reasonable doubt in the prosecution case.
238. If you accept the version of the defence you must find the accused not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.
239. The accused is not required to prove his innocence he is presumed innocent until proven guilty.
240. As mentioned earlier in this case, the accused is charged with two counts of attempted unlawful importation of illicit drugs namely methamphetamine weighing 20.3 kg and 79.3 kg respectively into Fiji, you should bear in mind that you are to consider the evidence in each count separately from the other. You must not assume that because the accused is guilty on one count that he must be guilty of the other as well.
241. Your possible opinions are:-

1. Count One: **ATTEMPTED UNLAWFUL IMPORTATION OF ILLICIT DRUGS - ACCUSED - GUILTY OR NOT GUILTY.**
2. Count two: **ATTEMPTED UNLAWFUL IMPORTATION OF ILLICIT DRUGS - ACCUSED - GUILTY OR NOT GUILTY.**

Ladies and Gentlemen Assessors

242. This concludes my summing up you may now retire and deliberate together and once you have reached your individual opinions please inform a member of my staff so that the court can be reconvened.
243. Before you do so, I would like to ask counsel if there is anything they might wish me to add or alter in my summing up.



Sunil Sharma
Sunil Sharma
Judge

At Lautoka
18 December, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.
Messrs Baleilevuka & Associates, Nadi for the Accused.