

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 360 OF 2016S

STATE

vs

ALIFERETI RATOKABULA

Counsels : **Mr. E. Samisoni and Ms. S. Lodhia for State**
Ms. V. Filipe and Ms. L. Manulevu for Accused

Hearing : **1, 2 and 5 March, 2018**

Ruling : **5 March, 2018**

Written Reasons : **9 March, 2018**

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 26 September 2016, he unlawfully cultivated 21.95 kilograms of cannabis sativa plants on his farm at Naqara, Ono, Kadavu.
2. During the police investigation, the accused was caution interviewed by police on 26 and 28 September 2016 at Kadavu Police Station. During the interview, the accused allegedly confessed to the crime. In a voir dire hearing on 1, 2 and 5 March 2018, the accused challenged the admissibility of his police caution interview statements.
3. The prosecution called 4 witnesses – all police officers. The accused gave sworn evidence. Altogether, there were five witnesses, on whose evidence, the court will have to make a decision.

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 the evidence of the 4 prosecution's witnesses. I have also carefully listened to the accused's sworn evidence.
6. The contention between the parties was typical of voir dire trials. The prosecution's four witnesses said they did not assault, threaten or made promises to the accused to confess, while he was in their custody. The accused said exactly the opposite.
7. I have heard and watched the witnesses give evidence for 3 days. At the end of it, I find the prosecution's 4 witnesses' evidence credible, and I accept their version of events.
8. I declared the accused's police caution interview statements as admissible evidence, and the same may be used in the trial proper. However, I said, its acceptance or otherwise, will be a matter for the assessors.
9. The above are the reasons for my ruling on 5 March 2018.



Salesi Temo
JUDGE

Solicitor for State :

Solicitor for Accused :

Office of the Director of Public Prosecution, Suva

Legal Aid Commission, Suva