

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 106 OF 2016S

STATE

vs

- 1. SULIASI BOLA**
- 2. ELISEO TUKANA**
- 3. MIKAELE RAIVASI**

Counsels : Ms. W Elo and Ms. S Navia for State
Mr. N. Tuifagalele for Accused No. 1
Ms. C Choy for Accused No. 2
Mr A Chand for Accused No. 3

Hearings : 31st July, 1, 7, 8, 9, 10 and 11 August, 2017

Summing Up : 14th August, 2017

Judgment : 15th August, 2017

JUDGMENT

1. On 8 August 2017, the following information, was put before all Accuseds, in the presence of their counsels:

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to Section 5(a) of the Illicit Drugs Control Act 2004.

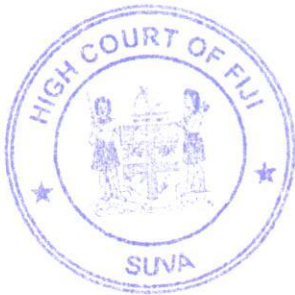
Particulars of Offence

SULIASI BOLA, ELISEO TUKANA and MIKAELE RAIVASI between 01 July 2015 and 04 December 2015 at Kadavu in the Eastern Division, without lawful authority cultivated 951 plants of cannabis sativa, an illicit drug weighing a total of 134.2 kilograms.

2. They pleaded not guilty to the same. The matter then went to trial before myself and three assessors. It took 5 days. Yesterday, after deliberating on the matter, the assessors returned with a mixed opinion. Assessor No. 1 and 2 found Accused No. 1 and 2 guilty as charged, while they found Accused No. 3 not guilty as charged. Assessor No. 3 found all accuseds guilty as charged.
3. The opinion of the assessors are not binding on the trial judge. (Section 237(2) of the Criminal Procedure Act 2009). However, if he differs with the majority opinion of the assessors, he must provide adequate reason for doing so.
4. All three assessors found Accused No. 1 and 2 guilty as charged. Obviously, they accepted the prosecution's version of events, which meant they accepted the prosecution's witnesses' evidence. I agree with their opinion on Accused No. 1 and 2. I accept Accused No. 1 and 2's confessions in their police caution interview statements and I find they made the statements voluntarily and out of their own free will. They did not complain to the police, the Magistrate Court or the High Court of any police misbehaviour while they were in their custody. Neither was any injuries found on them while they were in police custody. I also accept that Accused No. 2 voluntarily confessed to the police when he was formally charged. After assessing all the evidence, I find that Accused No. 1 and 2's confessions were the truth.
5. As for Accused No. 3, Assessor No. 1 and 2 found him not guilty as charged, while Assessor No. 3 found him guilty as charged. I will not accept the opinion of Assessor No. 1 and 2, but I will accept the opinion of Assessor No. 3. My reasons are as follows: I accept Accused No. 3's confession in his caution interview statement. I accept that he made his confession voluntarily and they were the truth. He said, he went with others to the marijuana farm,

identified in the "Booklet of photos" as Prosecution Exhibit No. 1, to assist in weeding at the farm. By doing so, he was caught with the offence of unlawfully cultivating cannabis sativa plants.

6. For the above reasons, I find all Accuseds guilty as charged, and I convict them accordingly.



Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused No. 1: **Tuifagalele Law, Suva**
Solicitor for Accused No. 2: **Legal Aid Commission, Suva**
Solicitor for Accused No. 3: **Legal Aid Commission, Suva.**