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IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT, FIJI ISLANDS

CRIMINAL APPEAL NO. AAU0052 OF 1999S
(High Court Criminal Appeal No. HAA0071 of 1999L)

BETWEEN:	SUREN PRASAD (f/n Mahadeo)	*Appellant*
AND:	THE STATE	*Respondent*
Coram:	Reddy J R, President Sheppard, JA Smellie, JA	
Hearing:	Thursday 23rd May 2002, Suva	
Counsel:	Mr. Gavin O'Driscoll for the Appellant Ms J.E. Hamilton-White for the Respondent	
Date of Judgment:	Friday 31st May, 2002	

JUDGMENT OF THE COURT

The Appellant was charged in the Magistrates' Court at Rakiraki for cultivating Indian Hemp, contrary to Section 8(4) of the Dangerous Drugs Act (as amended). The Particulars of Offence alleged that on the 19th of October 1997 at Rakiraki the Appellant was "found growing dangerous drugs namely 144 live plants of Indian Hemp." The Appellant pleaded not guilty to the charge, and after hearing witnesses called for the Prosecution, the Appellant having elected to make an unsworn statement, the learned Magistrate gave a short judgment and acquitted the Appellant.

Briefly, the evidence for the Prosecution was as follows: -

On the 9th of October 1997 Corporal Savenaca Vunisa, acting on information and armed with a search warrant went to the Appellant's farm at Tova, Rakiraki. Behind the Appellant's house, some 2-3 metres from it, between rows of corn and egg plants he saw plants growing that he thought were "marijuana plants". Similar plants were also growing in pots, a wooden box, and a basin. The plants were uprooted, and the pots, the box and the basin were brought to the police post with the Appellant. According to Corporal Vunisa, the Appellant admitted to him that the land on which the plants were growing was his and that he cultivated them. At the police post, in the presence of the Appellant the plants were counted, measured, tagged and tied together in a bundle. In this task Corporal Savenaca Vunisa was assisted by Corporal Sekaia, who also gave evidence. There were 144 plants.

On the 9th of October 1997, Corporal Sekaia gave the bundle of plants to the Crime Writer, Rakiraki, W.C. 2401 Mere. According to Constable Mere she gave the bundle to Constable Naicker at 7.30 p.m. on the same day to enable him to interview the Appellant, and she received the bundle back at 9.00 p.m. from Constable Nirbhay. According to Constable Naicker, when interviewed, the Appellant admitted that the bundle of plants was brought from his land that day, although he did not know who had planted them.

On the 15th of October 1997, Cpl. Appal Sami collected the bundle from Constable Mere, and took it to the Government's Koronivia Research Station, where it was handed to the Government Analyst, Josua Wainiqolo, in a sealed envelope. According to Mr. Wainiqolo, there were 144 plants in the bundle and some loose leaves. He analysed the plants and found

them to be Indian Hemp also known as Cannabis Sativa. Mr Wainiqolo, was extensively cross-examined by Counsel for the Appellant, but remained adamant that the plants which weighed 541.1 grams were Cannabis Sativa. The bundle was collected by Corporal Appal Sami from Koronivia Research Station on the 25th of November 1997, taken to Rakiraki and given to Constable Mere, who kept it in custody until it was produced in Court. On the 21st of December 1997, Corporal Appal Sami, who was the Investigating Officer in the case interviewed the Appellant. During this interview, the Appellant told the Corporal that two of the plants found on the land were grown by him or were his. In his unsworn statement, the Appellant denied that the plants found by Corporal Savenaca were his. He said that someone had put the plants on his land and had him reported. He denied that he admitted to Corporal Sami that two of the plants were his.

THE MAGISTRATE'S FINDINGS

In a very brief judgment, the learned Magistrate found that the charge had not been proved beyond reasonable doubt, because the date on which the 144 plants were seized by the police was not the date alleged in the particulars of offence. He pointed out that the 144 plants were received by the Government Analyst on the 15th of October 1997, and analysed by him the following day, whereas, according to the charge the plants were seized on the 19th of October 1997. The learned Magistrate also found that there was - in his words - "slight variance" in the chain of possession of the 144 plants, and this raised reasonable doubt in his mind as to whether the plants analysed were the same as those seized by the police. For these reasons he acquitted the Appellant.

The State appealed to the High Court from the judgment of the learned Magistrate.

THE JUDGE'S FINDINGS

The learned Judge in the High Court (Townsley J.) reviewed the evidence before the learned Magistrate and concluded that there was the clearest evidence that the 144 plants were seized on the 9th of October 1997 and not on the 19th of October 1997 as alleged in the particulars of offence. The learned Judge, referred to Section 214(2) of the Criminal Procedure Code, and held that the date mentioned in the charge, which was a typographical error, was not material, and if the Appellant was in anyway misled by it, then he was entitled to seek an adjournment, which he did not do.

Among the items that Corporal Vunisa had seized on the day in question, was a black plastic pot, but he omitted to mention this during his examination-in-chief, and denied seeing the black pot when cross-examined by Counsel for the Appellant. However, when his police statement was shown to him, he remembered that there was a black pot that he had seized. The pot was found during a break in the proceedings, the Corporal having gone looking for it, found it in the exhibit room. This was the only issue on which Corporal Vunisa was challenged, and the learned Judge concluded, that nothing turned on his failure to mention the black pot in his examination since this was merely an oversight. The learned Judge also found that the chain of possession of the 144 plants seized from the Appellant's farm was adequate, and that, these were the plants subjected to test, and found to be Indian Hemp or Cannabis Sativa by the Government Analyst.

The learned Judge allowed the appeal, and remitted the case to the learned Magistrate with a direction that the Appellant be convicted and sentenced according to law.

THE APPEAL

At the hearing, learned Counsel for the Appellant, relied on the following two grounds:-

> *"2. That the learned Judge erred in law by substituting his opinion for that of the learned trial Magistrate on the doubts held by him.*
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> *3. That the learned Judge erred in law by holding that the articles counted on the police post floor being 114 plants plus some loose leaves, which were then held by the exhibiting officer in the exhibit room and those taken to Koronivia to be tested by the Government Analyst could not possibly be other than the same collection of plants."*

GROUND 2

Unlike the appeal to this Court, which is restricted to questions of law only, the appeal from the Magistrates' Court to the High Court may be on a matter of fact as well as on a matter of law. (Section 308(3) Criminal Procedure Code.) And the appeal is by way of rehearing, on the record of the proceedings before the Magistrate. The learned Judge was entitled to review the whole of the evidence adduced before the Magistrate, and to test the adequacy of the findings made by the Magistrate against the evidence adduced. The learned Judge reached the conclusion that the acquittal was against the weight of evidence, and the verdict was unreasonable having regard to the evidence. He concluded that the Magistrate could not have reached the conclusion that he did, if he had properly directed himself. The learned Judge was entitled to find, as he did, that the misconception in the learned Magistrate's reasoning and

the doubt that he entertained arose from the error in the date in the charge. There was no nexus between the defect in the charge on the one hand and a finding of fact as to the adequacy of proof of the identity of the drugs on the other.

There was ample evidence, upon which the learned Judge could, and did reach that conclusion. The weight to be attached to the evidence was a matter for the learned Judge, and his assessment of it involves no question of law, which could be challenged on this appeal.

We find no merit in this ground of appeal.

GROUND 3

We do not see any merit in this ground of appeal. Earlier in this judgment, we summarized the evidence as to the chain of possession of the 144 plants from the time they were counted and tagged on the 9th of October 1997, to the time they were produced in Court, and marked as Exhibit 6. The learned Judge was entitled to conclude on that evidence, as he did, that the bundle analysed by the Government Analyst could not have been any other than the same bundle.

We see nothing wrong in the learned Judge's reasoning, accordingly this ground of appeal must also fail.

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RESULT

This appeal is without merit. It is dismissed.

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Reddy J R, President

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Sheppard, JA

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Smellie, JA

Solicitors:
Messrs O'Driscoll & Shivam, Suva for the Appellant
Office of the Director of Public Prosecutions, Suva for the Respondent

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