

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: 225 OF 2011

STATE

-v-

AINARS KREMANIS

Counsels : Mr. T. Qalinauci for the State

Accused in Person

Date of Trial : 24 September - 30 September 2013

Date of Summing Up : 01 October 2013

SUMMING UP

Madam Assessors and Gentlemen Assessor:

1. We have now reached the final phase of this case. The law requires me – as the Judge who presided over this trial –to sum up the case to you on law and evidence. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.
2. I will direct you on matters of law which you must accept and act upon.

3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.
4. In other words you are the Judges of fact. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
5. The counsel for Prosecution and the accused made submissions to you about the facts of this case. That is their duty as the Prosecution Counsel and the accused. But it is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinion, and your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions, but I will give them the greatest weight when I come to deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law, that the accused person is innocent until he is proved guilty. The burden of proving his guilt rests on the prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.
9. Your decisions must be solely and exclusively upon the evidence, which you have heard in this court and upon nothing else. You must disregard anything you might have heard or read about this case, outside of this courtroom. Your duty is to apply the law as I explain to you to the evidence you have heard in the course of this trial.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. As assessors you were chosen from the community. You, individually and collectively, represent a pool of common sense and experience of human affairs in our community which qualifies you to be judges of the facts in the trial. You are expected and indeed required to use that common sense and experience in your deliberations and in deciding.

12. In accessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole. In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.
13. The witnesses called in the trial had to rely on their memory of events occurred in November 2011. Witnesses who ever they may be cannot be expected to remember with crystal clarity events which occurred 22 months ago. You should make allowances for the fact that with passage of time memories fade.
14. In this case the prosecution and defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth. They are of course important part of the case. The agreement of these facts has avoided the calling of number of witnesses and thereby saved a lot of court time.
15. The agreed facts are:
- (i) The accused in this case is **AINARS KREMANIS** of **LATVIA**.
 - (ii) On 11th November 2011, the accused came into Fiji from Hong Kong.
 - (iii) The accused came to Fiji for holiday and had a return ticket back to Hong Kong on the 14th of November 2011.
 - (iv) The accused had travelled from Riga to Istanbul to Casablanca to Cameroon to Bangui to Nairobi then to Doha and then one night in Qatar then to Hong Kong before arriving in Fiji.
 - (v) The brown suitcase contained assorted clothes and 4 wooden painting.
 - (vi) The accused, **AINARS KREMANIS** was arrested on the 11th of November 2011 from the Nadi International Airport.
 - (vii) The following documents are not in dispute between the prosecution and the Defendant and will be tendered by consent as Prosecution evidence.
 - (a) Fiji Forensic Laboratory Drug Analysis and Certificate from Mrs. M. Nawaikula
 - (b) Travel history of Ainars Kremanis
 - (c) Arrival card entry of Ainars Kremanis
 - (d) Custom Declaration Form signed by Ainars Kremanis
 - (e) Passport of Ainars Kremanis
 - (f) Western Union money received by Ainars Kremanis from Cosmos Anyaegbu

- (g) Boarding pass from Riga to Istanbul
- (h) Boarding pass from Istanbul to Casablanca
- (i) Boarding pass from Bangui to Nairobi

16. The charge against accused is a charge of unlawful possession of Illicit Drugs contrary to Section 5 (a) of the Illicit Drugs Control Act of 2004. The particulars of the offence, as alleged by the prosecution, are:

AINARS KREMANIS on the 11th day of November 2011 at **NADI** in the **WESTERN DIVISION**, without lawful authority, was found in possession of illicit drugs, namely **METHAMPHETAMINES** weighing 5,627.9 grams or 5.6279 kilograms.

17. I will now deal with the elements of the offence. The offence of possession of Illicit Drugs is defined under Section 5 (a) of the Illicit Drugs Control Act 2004.

18. So, the elements of the offence in this case are that:

- (1) The accused
- (2) Without lawful authority
- (3) Was in possession of illicit drug

19. If you accept the agreed fact of expert evidence that the substance in this case is Methamphetamine, then as a matter of law, I must direct you that Methamphetamine is an illicit drug.

20. A person acts with lawful authority in relation to an illicit drug if that person has been prescribed the drug on a medical ground or the person's lawful profession involves administration of an illicit drug. There is no suggestion that the accused person has acted with lawful authority in this case.

21. Possession is proven if the accused intentionally had the substance in his physical custody or control to the exclusion of others, except anyone who was acting in concert with him in the alleged offence.

22. The prosecution should also prove beyond reasonable doubt that in intentionally having such custody or control the accused did so with the knowledge or belief that the substance was an illicit drug not necessarily the illicit drug charged here, but a drug the possession of which is prohibited.

23. The issue for you to decide is in whose possession was it? Was it accused's drugs? The word possession simply means having something in one's custody and control with knowledge of such custody and control. So the question for you to decide is whether these drugs were in the accused's custody and control or not.
24. Apart from the elements of the offence, the identity of the person who alleged to have committed the offence is very important. There must be positive evidence beyond reasonable doubt on identification of the accused-person and connect him to the offence that he alleged to have been committed.
25. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw it or by a victim who saw and heard the offence being committed.
26. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, Forensic Drug Analysis Certificate is an example if you believe that such a record was made. Then you can act on such evidence. You can take into account the contents of the document if you believe that contemporaneous recordings were made at the relevant time on the document upon examination of the exhibits. In fact in this case the Forensic Drug Analysis Certificate is an agreed document. Thus you can treat it as truth and act on it.
27. Expert evidence is also important to borne in mind. Usually, witnesses are not allowed to give opinions. They are allowed to give evidence on what they saw, heard or felt by their physical senses only, as described earlier. The only exception to this rule is the opinions of experts. Experts are those who are learned in a particular science, subject or a field with experience in the field. They can come as witnesses and make their opinions express on a particular fact to aid court and you to decide the issue/s before court on the basis of their learning, skill and experience.
28. The Government Analyst in this case, for example, is an expert witness. The Government Analyst, unlike any other witness, gives evidence and tells us her conclusion or opinion based on her examination of the drugs. That evidence is not accepted blindly. You will have to decide the issue of possession before you by yourself and you can make use of the opinion if her reasons are convincing and acceptable to you; and, if such opinion is reached by considering all necessary matters that you think fit. In accepting Government Analyst's opinion, you are bound to take into account the rest of the evidence in the case.

29. In assessing evidence of witnesses you need to consider a series of tests. They are for examples:

Test of means of opportunity: That is whether the witness had opportunity to see, hear or feel what he/she is talking of in his/her evidence. Or whether the witness is talking of something out of place mechanically created just out of a case against the other party.

Probability and Improbability: That is whether what the witness was talking about in his or her evidence is probable in the circumstances of the case. Or, whether what the witness talked about in his/her evidence is improbable given the circumstances of the case.

Belatedness: That is whether there is delay in making a prompt complaint to someone or to an authority or to police on the first available opportunity about the incident that was alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story.

Spontaneity: This is another important factor that you should consider. That is whether a witness has behaved in a natural or rational way in the circumstances that he/she is talking of, whether he/she has shown spontaneous response as a sensible human being and acted accordingly as demanded by the occasion.

Consistency: That is whether a witness telling a story on the same lines without variations and contradictions.

30. You need to consider all those matters in evaluating the evidence of witnesses. You shall, of course, not limit to those alone and you are free to consider any other factors that you may think fit and proper to assess the evidence of a witness. I have given only a few illustrations to help what to look for to evaluate evidence.

31. I will now deal with the summary of evidence in this case.

32. Prosecution called Solomone Bogidrau Cagilevu as the first witness. He is a customs officer at Nadi International Airport. On 11.11.2011 he had received information about a passenger coming from Hong Kong. They have identified him through passenger list. When the flight came he was directed by his supervisor Tomasi Drisi to check all the baggage of this passenger. He was referred from the primary line. At that time all the other passengers have taken their baggage and one bag was left on the belt.

33. Then Air Terminal Service had X screened the baggage in his presence and told him that there are some drugs in the baggage. It was a brown suitcase. He had waited for the passenger to come and collect the luggage and come to customs examination.
34. The passenger came and picked the luggage. He was asked to put it on the examination table. His passport and arrival card were taken. He was asked questions about the luggage. He had admitted that the suitcase was belonging to him and he packed it and know the content. He had opened the suitcase on their request.
35. He identified the accused as the passenger. When the accused opened the suitcase there were clothes and four picture frames. The accused was advised that they are carrying a 100% search. Accused consented to the same. When he checked it was observed that picture frames were done in a rush. The base of the picture frames were really thick and were covered from the back. When the accused was asked where he is taking the frames he answered 'no English'.
36. He became suspicious and called the supervisor Tomasi Drisi and got his permission to open the frames. When accused was asked to open the frame he had torn one picture and thrown all four at them. He identified that picture in open court. He had asked the others to help him examine the base of the picture. He had asked the accused to do so and given him a screw driver. The accused had put the screw driver in a gap in the base and given the picture back to them. When he opened the base, white substance had come out. The accused was cautioned at that time by SCO Tomasi.
37. There were 8 plastic bags with white crystals packed there. The bags fit into the frames in the base. He identified the four picture frames and the bags containing white crystal substance found in the compartments in the back side of those picture frames.
38. Under cross examination he said that picture frames were scanned only once not thrice. Further he said that frames were put on the floor for the dog to sniff only after the 1st picture was opened. He denied that accused was in a separate room at the time other three pictures opened.
39. You watched him giving evidence in court. What was his demeanor like? How he react to being cross examined and re-examined? Was he evasive? How he conduct himself generally in Court? Given the above, my directions on law, your life experiences and common sense, you should be able to decide whether witness's evidence, or part of a witness's evidence is reliable, and therefore to accept and whether witness's evidence, or

part of evidence, is unreliable, and therefore to reject, in your deliberation. If you accept the evidence of this witness beyond reasonable doubt then you have to decide whether that evidence is sufficient to establish that the accused was in possession of an illicit drug.

40. The second witness for the prosecution was Setareki Tulovani. He is a Custom Officer with 13 years experience. He was attached to the intelligence unit at the Nadi Airport. On 7.11.2011 he had received information about a suspect with Latvian nationality coming from Hong Kong in Cathy Pacific flight No. FJ 392 with drugs concealed in a suitcase. But that person did not come that day.
41. On 11.11.2011 same flight came at 7.00 a.m. When he checked the passenger manifest, name of the suspect was identified. Primary line officers were informed about the suspect. He had gone to baggage hall to assist the other Custom Officers. SCO Tomasi and Solomone were there. The suspect came with brown suitcase which was sealed. It was opened by the suspect with the help of SCO Tomasi. There were clothes and four photo frames. When these frames were scanned it showed there are compartments inside.
42. When suspect tried to open the picture frame with a screw driver white colored crystal substance came out. He identified the four picture frames. There were 28 plastic bags containing white crystal substance inside the four picture frames. Then those were weighed and sealed and Solomone prepared the papers to hand those over to police. He identified the accused in court.
43. In cross examination he denied that suitcase was scanned before he came. Further he said that the dog was brought before the picture frames were opened. He denied that suspect was not there at the time the frames were opened.
44. You saw him giving evidence in Court. He had given prompt answers to questions put to him by the accused. It is up to you to decide whether you could accept his evidence beyond reasonable doubt. If you accept his evidence it corroborates the evidence of Solomone Bogidrau Cagilevu.
45. The third witness for the prosecution was Ms. Susana Lawedrau. She is a Technical Officer attached to Forensic Department at Suva. She had received the illicit drugs on 13.3.2012 from DC 2460 Savenaca of Border police. She had received a cardboard box with four sealed Prouds plastic bags. Two of them contained 8 plastic packs with white crystals and other two with 6 plastic packs with white crystals. She had opened the sealed bags. Then she issued Government Analyst form confirming the receipt. At the lab, photographs were

taken and random sampling was done. Then productions were given to DC Savenaca on 12.4.2012. She identified and tendered the productions P8, P9, P10 & P11 containing White crystals. She had sealed P8, P9 & P10. The weighing was done by Ms. Reddy. She also identified and tendered the cardboard box as P12.

46. The next witness for the prosecution was Ms. Archall Reddy. She is Senior Scientific Officer attached to Fiji Police force. She had taken the parcels from Susana and weighed the productions. She had also taken random samples from each pack. She identified each pack with crystals and gave the weight of each of those packets.
47. PC Waisale Qomate was the next witness for the prosecution. On 14.11.2011, at about 0515 hours, he had taken the brown colored suitcase from DC Savenaca and escorted it to Koronivia Research Station. The exhibit was sealed. He had handed over the exhibit to IP Meli with a request of analysis. He had received the result and the exhibit back. He had handed over the exhibit and the report to DC Savenaca at Nadi Police station same day at about 1900 hours. He was not cross examined by the accused.
48. Joanna Taylor was the next witness for the prosecution. She had taken up duties as crime writer and recorder on 8.10.2011 at Border Police at Nadi International Airport. On 11.11.2011 DC Savenaca had handed over the exhibits of this case to her. Those included one brown bag, four picture frames and four Prouds bags containing white crystals which were sealed. She identified those in court. She had recorded the same in the exhibit register and kept those in the exhibit room. Exhibit reference No. 124/11 was given to Investigating Officer.
49. Emma Rounds was the next witness for the prosecution. On 15.12.2011 she had taken over the duty as crime writer and exhibit writer from Joanna Taylor. She had physically checked the exhibits and paper work hand over was done. On 24.7.2012 on instructions of the Divisional Commander West SSP Salaceli Navilawasa, all the drugs exhibits were transported to HQ in Lautoka. She identified the brown suitcase (P1) and cardboard box (P12) in court. The exhibits were handed over to Cpl. Loata at Lautoka who locked those in the exhibit room. Reference No. 278/12 was given to her. She was not cross examined by the accused.
50. The last witness for the prosecution was DC Savenaca Mara. He was the Investigating Officer of this case. He is an officer with 19 years experience. He was informed about the detection on 11.11.2011 around 1300 hours. He had proceeded to customs baggage hall. Three custom officers were dismantling the four picture frames when he arrived there.

Crystal substance was taken out and weighed in his presence. There were 28 packets. Those were marked by Solomone. The total weight was 5.6 kg. He identified the brown suit case, four picture frames, the 28 white crystal packets and the four Prouds plastic bags from his initials and tags pasted on them.

51. After the packets were packed Solomone prepared the custom card note and the detention note. The exhibits and the suspect were handed over to him. He had prepared a search list. He submitted the same to court. He identified those documents. He had escorted the drugs to the border police station. Another officer had escorted the suspect. At the police station details were entered in the station diary. The drugs were kept locked in the Officer-in-Charge operation room with key in his hand. The suspect was rearrested and explained the reason for arrest. He was cautioned and rights were explained. Although he started the caution interview at 1900 hours same day, it was suspended to get the assistance of an interpreter. The caution interview was conducted for four days as the interpreter was not available most of the time. The suspect was charged on 15.11.2011.
52. On 14.11.2011, the exhibits were taken to Koronivia by PC Waisale for analysis. He had received the report same day at 1940 hours with the exhibits. He had taken steps to sent samples to Australia for further analysis.
53. Under cross examination by the accused he stated that accused was present when the all four picture frames were opened.
54. Prosecution case was closed with this evidence and submitting the exhibits-1-13.
55. After the prosecution case was closed you heard me explaining the accused his rights in defence.
56. The Accused elected to give evidence. His position was that he flew from Riga to Istanbul to Casablanca to Cameroon. He was detained in Cameroon for 10 days without any reason. When he was released, he had spent 22 days with a priest till he got air ticket. After calling a friend at Latvia he met one Cosmos, who arranged his air tickets and visa. Then he went to Doha and then to Bangui. He had spent a week there. He met Patrick who took him to a hotel. Patrick had arranged the air tickets. At the airport Patrick had given the brown suitcase and tickets to him from Bangui to Hong Kong. He had gone from Bangui to Nairobi and had stayed there for four days. Then he had gone to Qatar and then to Hong Kong. On 11.11.2011 he had arrived in Fiji from Hong Kong.

57. There was no problem with his documents. At the customs his bags were scanned. When he wanted the brown suitcase, he was asked to open it. He had admitted that it was his bag. He opened the suitcase and all his clothes were put on examination table. He was asked 'Where are the Drugs?' He denied knowledge. The pictures were scanned thrice and policeman with a dog was called in. Dog had sniffed and there was no scent. He was given a screw driver to open the pictures. As he could not open it, the Custom Officers have opened the first picture. He had seen the white substance. Then he was asked whether there is same substance in other pictures? He had denied the knowledge.

58. He was taken to another room and Custom Officers continued to open the other pictures. When all the pictures were opened he was taken there and was asked to follow a Police Officer. Although his interview by police was commenced same evening, they could not proceed without an interpreter. The next four days he was interviewed with the assistance of an interpreter. He was taken to Court on 15.11.2011.

59. Under cross examination by the prosecution, accused admitted that the brown suitcase is his, but denied that he packed it. He denied seeing the four pictures earlier. He denied meeting a painter in Bangui or buying four pictures from him. His attention was drawn to the following questions and answers in the caution interview.

Q139: Did you take any phone contact of the painter whose name was Pastu?

A: No, he did not give any contact he only said that we will meet after two days.

Q140: Did you meet the painter again?

A: Yes we met after two days.

Q141: Then what happen?

A: The painter brought with him the four paintings and I paid \$100 in US currency for the four pictures.

Q142: Where was this transaction took place?

A: At the same bar where we first met.

Q143: What all paintings were given to you?

A: Flowers, sheep and Boat that's all what I can remember.

Q144: Where did you keep the painting?

A: I put it in my suitcase when I returned to the resort where I was staying.

Q145: What kind of suitcase did you put the painting in?

A: The brown suitcase.

Q146: Where did he brought the suitcase from?

A: From Cameroon.

Q147: Is there anything else put inside the brown suitcase at the resort?

A: Only the 4 paintings and my clothes.

60. He said those are not true. He admitted that he had travelled to South Africa and back to Latvia through Tokyo earlier. This time he was to travel to Cameroon and come back to Latvia. He admitted that he had no reason to come to Fiji. He further admitted that he knew that certain items are prohibited to transport.

61. With this evidence the accused closed his case.

62. The position taken up by the accused in giving evidence in the court is different from his police statement and the position taken up by him at the time he cross examined the prosecution witnesses. In other words his version is inconsistent. It is up to you to decide whether you could accept his version and his version is sufficient to establish a reasonable doubt in the prosecution case. If you accept his version accused should be discharged. Even if you reject his version still the prosecution should prove its case beyond reasonable doubt. Further you will have to decide whether it is probable for the accused to travel from Hong Kong to Fiji on his way to Latvia with a suitcase never opened by him.

63. I must remind you that when an accused person has given evidence he assumes no onus of proof. That remains on the prosecution throughout. His evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

64. You will generally find that an accused gives an innocent explanation and one of the three situations then arises:

- (i) You may believe him and, if you believe him, then your opinion must be Not Guilty. He did not commit the offence.
- (ii) Alternatively without necessarily believing him you may say 'well that might be true'. If that is so, it means there is reasonable doubt in your minds and so again your opinion must be Not Guilty.
- (iii) The third possibility is that you reject his evidence as being untrue. That does not mean that he is automatically guilty of the offence. The situation then would be the same as if he had not given any evidence at all. He would not have discredited the

evidence of the prosecution witnesses in any way. If prosecution evidence proves that he committed the offence then the proper opinion would be Guilty.

65. I have summarized all the evidence before you. But, still I might have missed some. That is not because they are unimportant. You heard every item of evidence and you should be reminded yourselves of all that evidence and from your opinions on facts. What I did was only to draw your attention to the salient items of evidence and help you in reminding yourselves of the evidence.

66. Remember, the burden to prove accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial, and never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt.

67. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of accused's guilt you must find him guilty for the charge. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of accused's guilt, you must find him not guilty as charged.

68. Your possible opinions are as follows:

Count of Possession of Illicit drug Methamphetamine - Guilty or Not Guilty

69. You may now retire to deliberate on the case, and once you have reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.

70. Any re-directions?

Sudharshana De Silva
JUDGE

01st October 2013
At Lautoka

Solicitors for the State:
Solicitors for the Accused:

Office of the Director of Public Prosecution
In Person