

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 024 OF 2019L

STATE

vs

MESULAME KURINACOBA

Counsels : Ms. J. Fatiaki for State
Ms. E. Radrole and Ms. N. Singh for Accused

Hearings : 12, 13, 14, 15 and 18 November, 2019.

Summing Up : 19 November, 2019.

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my 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 fact.
2. State and Defence Counsels 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 Counsels, in this case. Their submissions were designed to assist you, as the judges of

fact. However, you are not bound by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest 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 is proved guilty.

5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.

6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim, which is the public, in this case. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. You have a copy of the information with you, and I will now read the same to you:

“... [read from the information]....”

D. THE MAIN ISSUE

8. In this case, as assessors and judges of fact, each of you will have to answer the following question:
- (i) Did the accused, between 1 October 2016 and 6 March 2017, at Navosa in the Western Division, without lawful authority, cultivate 1,589 plants of cannabis sativa, weighing 198 kilograms?

E. THE OFFENCE AND IT'S ELEMENTS

9. The accused was charged with “unlawful cultivation of an illicit drug”, contrary to section 5 (a) of the Illicit Drugs Control Act 2004. For the accused to be found guilty of the offence, the prosecution must prove beyond reasonable doubt, the following elements:
- (i) The accused
 - (ii) knowingly
 - (iii) without lawful authority
 - (iv) cultivated
 - (v) an illicit drug
10. Under Section 2 of the Illicit Drugs Control Act 2004, an “illicit drug” means any drugs listed in Schedule 1 of the Act. In Schedule 1 Part 8 of the above 2004 Act, a “cannabis plant”, whether fresh, dried or otherwise, is an “illicit drug”. A cannabis sativa plant, commonly known as a marijuana plant, according to the above definition, in an “illicit drug”. To make the accused liable for the offence, the prosecution must make you sure that what the accused was cultivating, at the material time, was an “illicit drug”, within the definition of the above 2004 Act.
11. The prohibited act in the offence is the verb “cultivate”. Under Section 2 of the Illicit Drugs Control Act 2004, the word “cultivate” means “planting, sowing, scattering the seed, growing, nurturing, tendering or harvesting”. Put simply, the prosecution must make you

sure that the accused was planting or growing an illicit drug, at the material time. This is the physical element of the offence.

12. In addition to the above, the prosecution must make you sure that, the accused, at the material time, knowingly cultivated an illicit drug. It must be shown that the accused knew, at the material time, that he was cultivating an illicit drug. This is the mental element or fault element of the offence.
13. The prosecution must also make you sure that the accused had no lawful authority to cultivate an illicit drug, at the material time. However, the accused can escape liability for the offence if he proves, on the balance of probabilities, that he had lawful authority to cultivate the illicit drug. You must look at and carefully consider the total evidence, when answering the above issues.

F. THE PROSECUTION'S CASE

14. The prosecution's case were as follows. Mr. Mesulame Kurinacoba (accused) was 35 years old at the time of the alleged offence, that is, between 1 October 2016 and 6 March 2017. He resided with his parents at Nakorovou Village, Navosa. He reached Form 4 level education and did farming for a living. He planted cassava, sweet potatoes, bananas and dalo. He was a subsistence farmer.
15. According to the prosecution, the accused also planted marijuana plants higher up the mountains of Navosa. To reach the farm, you had to travel via a four wheel drive vehicle, on horseback and then walk to the same. It took several hours to reach the same. According to the prosecution, the size of his marijuana farm was equivalent to twice the size of Suva High Court No. 2. On the farm the prosecution alleged, the accused grew a total of 1,589 cannabis sativa plants, and the same weighed 198 kilograms.

16. According to the prosecution, the accused allegedly had no lawful authority to cultivate the above marijuana plants. According to the prosecution, the accused allegedly grew the marijuana plants to sell to earn him an income. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.

G. THE ACCUSED'S CASE

17. On 13 November 2019, the information was put to the accused, in the presence of his counsels. He pleaded not guilty to the charge. In other words, he denied the allegation against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he chose to remain silent and called no witness. That was his right.
18. Nothing negative whatsoever should be imputed to the accused when he chose to exercise his right to remain silent. This is because the burden to prove his guilt beyond reasonable doubt, remains with the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. Remember what I told you in paragraph 4 hereof, and I repeat the same here. There is no burden on the accused to prove his innocence, or prove anything at all. He is presumed innocent until he is proven guilty beyond a reasonable doubt. He is entitled, as he had done here, to fold his arms, sit there in the dock, and demand the prosecution prove his guilt beyond a reasonable doubt.
19. So, in this case, you will have to carefully examine the prosecution's case, and decide whether or not they had made you sure that the accused was guilty as charged. You will have to carefully examine the evidence of the 6 witnesses, that is, five police officers and one civilian, and decide whether or not the totality of their evidence had made you sure of the accused's guilt. If you are sure of the accused's guilt, you must find him guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.

20. Because he denied the allegation against him by pleading not guilty to the charge, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the defence.

H. **ANALYSIS OF THE EVIDENCE**

(a) **Introduction:**

21. In analyzing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors and judges of fact, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the state's case against the accused; then we will discuss the accused's position in this case, and lastly, the need to consider all the evidence.

(b) **The State's Case Against the Accused:**

22. The State's case against the Accused can be split into three parts. First, the police allegedly taking the accused to his farm, sighting the alleged marijuana plants, uprooting the same, bringing the same to Navosa Police Station (NPS), the alleged illicit drugs been analyzed, the same been given back to police and its destruction thereafter by a court order dated 10 March 2017. Secondly, the alleged caution interview of the accused at Keyasi Police Station (KPS) on 9 March 2017 by D/Corporal 3757 Sekonaia Ravono (PW4). Thirdly, the alleged formal charging of the accused at Navosa Police Station by Corporal 4180 Tevita Radu (PW6) on 9 March 2017.
23. We will now discuss the first part. DC 3776 Sailosi Rokomatu (PW1) is a police officer of 14 years standing. In March 2017, he was a "drugs intelligence unit" police officer based at Sigatoka Police Station (SPS). PW1 said it was their jobs to gather intelligence on illicit drug activities in the Sigatoka area. PW1 said, their unit received information that Mesulame Kurinacoba was allegedly cultivating marijuana in the interior of Navosa. PW1 said, he and other police officers visited Mesulame at his village in Korovou on 5 March

2017. PW1 said, he questioned Mesulame on the above allegation and he allegedly admitted the same to him. PW1 said he asked Mesulame to lead the police to his farm and he agreed.

24. PW1 said, Mesulame, himself and other police officers then travelled to “Yalavou” in police vehicles on the same day, that is, 5 March 2017. Because of bad weather, PW1 said, they reached “Yalavou” at 2 am on 6 March 2017. PW1 said, they then travelled on horseback through the mountains. At 10 am on 6 March 2017, PW1 said, the accused allegedly showed the police his marijuana farm. According to PW1, the marijuana farm was twice the size of Suva High Court No. 2. PW1 said, he saw marijuana plants growing on the farm. PW1 said, he and the other police officers uprooted the plants, and there were 1,589 marijuana plants in total. PW1 said, they bundled the plants into 15 bundles. They then carried the 15 bundles of marijuana plants on horseback and police vehicles to Navosa Police Station. Because of the difficult terrain, PW1 said they spent 7th and 8th March 2017 bringing the marijuana plants to Navosa Police Station (NPS).
25. PW1 said, they arrived at NPS at 1 am on 9 March 2017. PW1 said, he handed the 15 bundles of marijuana plants to the NPS exhibit writer, PC 4480 Saula Kunavatu (PW2). PW1 said Mesulame Kurinacoba was handed over to the NPS officer. PW2 said, he received and registered the 15 bundles of marijuana plants in the NPS exhibit register on 9 March 2017. PW2 said he counted the plants and they were 1,589 in total. PW2 said, he later handed the marijuana plants to Ms. Miliana Werebauinona (PW3), a Principal Scientific Officer with Fiji Police Force Forensic Chemistry Lab. PW3 later conducted scientific tests on the plants to determine whether or not they were cannabis sativa. She concluded later that the plants were indeed cannabis sativa and weighed a total of 198 kilograms. PW3 submitted her report as Prosecution Exhibit No. 1 (A) and 1 (B). Please, read the same carefully. PW3 later handed the 1,589 plants back to the police on the same day, that is, on 9 March 2017.

26. Inspector Esira Dokoni (PW5) next gave evidence on what happened to the drugs. PW5 said, the Sigatoka Magistrate Court, on 10 March 2017, made an order for the above 1,589 marijuana plants to be destroyed. PW5 tendered the court order as Prosecution Exhibit No. 3. Please, read it carefully. PW5 said, the terms of the court order was carried out by the police. He submitted the Certificate of Drug Destruction as Prosecution Exhibit No.4, and a booklet of photos, showing the drugs been taken from the NPS exhibit room and destroyed by burning, as Prosecution Exhibit No. 5. Please, examine the exhibits carefully. The important point about the above evidence was that it showed that the 1,589 marijuana plants uprooted from Mesulame Kurinacoba's farm were scientifically proven to be cannabis sativa, as illicit drug.
27. We next discuss the accused's alleged caution interview by D/Corporal 3757 Sekonaia Ravono (PW4). PW4 said, he caution interviewed Mesulame Kurinacoba (accused) at Keyasi Police Station on 9 March 2017. PW4 said the interview started at 1.25 pm and it was concluded at 6.30 pm on the same day. PW4 said the interview was in the i-taukei language, and he later translated the same to English. He submitted the interview notes as Prosecution Exhibit No. 2 (A), the i-taukei version, and 2 (B), the English version. Please, read it carefully. PW4 said, the accused was given his rights, he was formally cautioned and was given breaks. PW4 said, the accused, himself and the witnessing officer, signed the interview notes on all the pages. PW4 said, the police did not threaten or forced him to give his statements. From questions and answers 25 to 36, 38 to 48 and 48 to 51, Mesulame admitted cultivating cannabis sativa plants at his farm, at the material time.
28. Finally, we discussed the accused's alleged charge statement. Corporal 4180 Tevita Radu (PW6) formally charged Mesulame Kurinacoba on 9 March 2017 at Navosa Police Station, in the i-taukei language. He recorded the charging via a computer. The record was later printed and signed by the accused, PW6 and the witnessing officer Police Constable Lemeki. PW6 later translated the charge statement into English. He tendered the charge statement as Prosecution Exhibit 6 (A), i-taukei version, and 6 (B), the English version.

Please, read the same carefully. In questions and answers 8, 9 and 12, the accused admitted he was planting marijuana, at the material time, as his source of income. PW6 pointed out Mesulame Kurinacoba in the dock as the person he formally charged at the material time. So, it would appear that, in his caution interview and charge statements, the accused appeared to have fully admitted the offence.

29. In any event, when considering the above alleged confessions by the accused, I must direct you as follows, as a matter of law. A confession, if accepted by the trier of fact – in this case, you as assessors and judges of fact – is strong evidence against its maker. However, in deciding whether or not you can rely on a confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements contained in his caution interview and charge statements? If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of the caution interview and charge statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If it's otherwise, you may give it less weight and value. It is a matter entirely for you.
30. If you accept the prosecution's witnesses' version of events, you will have to find the accused guilty as charged. If otherwise, you will have to find the accused not guilty as charged. It is a matter entirely for you.

(c) **The Accused's Case:**

31. I had summarized the accused's case to you from paragraphs 17 to 20 hereof. I repeat the same here.

(d) **The Need To Consider All the Evidence:**

32. The prosecution called 6 witnesses:
- (i) DC 3776, Sailosi Rokomatu (PW1);
 - (ii) PC 4480, Saula Kunavatu (PW2);
 - (iii) Ms. Miliana Werebauinona (PW3);
 - (iv) D/Corporal 3757 Sekonaia Ravono (PW4);
 - (v) Inspector Esira Dokoni (PW5); and
 - (vi) Corporal 4180 Tevita Radu (PW6).
33. The prosecution submitted the following exhibits:
- (i) Prosecution Exhibit No. 1 (A) - Analysis of Cannabis Job No. 217173;
 - (ii) Prosecution Exhibit No. 1 (B) - Analysis of Cannabis Job No. 217174;
 - (iii) Prosecution Exhibit No. 2 (A) - Caution Interview Notes, i-taukei;
 - (iv) Prosecution Exhibit No. 2 (B) - Caution Interview Notes, English;
 - (v) Prosecution Exhibit No. 3 - Sigatoka Magistrate Court Order dated 10 March 2017;
 - (vi) Prosecution Exhibit No. 4 - Certificate of Drug Destruction;
 - (vii) Prosecution Exhibit No. 5 - Booklet of Photos;
 - (viii) Prosecution Exhibit No. 6 (A) - Charge Statement, i-taukei; and
 - (ix) Prosecution Exhibit No. 6 (B) - Charge Statement, English.
34. You will have to consider the above evidence together. Compare them and analyze them together. If I haven't mentioned a piece of evidence you consider important, please take it on board in your deliberation. If you find a witness credible, you are entitled to accept the whole or some of his/her evidence in your deliberation. If you find a witness not credible, you are entitled to reject the whole or some of his/her evidence in your deliberation. You are the judges of fact.

I. **SUMMARY**

35. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it 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. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. 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 the accused's guilt, you must find him not guilty as charged.
36. Your possible opinion is as follows:
- (i) Unlawful cultivation of illicit drugs: - Guilty or Not Guilty
37. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.




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JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Legal Aid Commission, Suva.