

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 324 OF 2018S**

**STATE**

**vs**

**INOKE SIVA**

**Counsels : Mr. E. Samisoni for State**  
**Ms. T. Kean and Ms. M. Cobona for Accused**

**Hearings : 2, 3, 4 and 5 March, 2020.**

**Summing Up: 6 March, 2020.**

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**SUMMING UP**

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**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, on 20 July 2018, at Suva in the Central Division, without lawful authority, possess 15 kilograms of cannabis sativa, an illicit drug?

**E. THE OFFENCE AND IT'S ELEMENTS**

9. For the accused to be found guilty of the offence, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) The accused  
(ii) without lawful authority  
(iii) possesses  
(iv) an illicit drug.

10. First, the key to the offence lies in the meaning of the verb “possesses”. The verb “possesses” is often taken to mean that someone has something in his custody and

control. For example, I go on a holiday to England. I pack my clothes in my bag, which I carry into a hotel. That would mean “I possess my clothes.” This is the physical part of the meaning of the verb “possession.” But in criminal law, the prosecution is required to make you sure of the second element of the verb “possession”, that is, I knew or had the intention to possess the clothes in my bag. This is the mental element of the verb “possession”. So, for me to be legally in possession of my clothes in the bag, I must have physical custody and control of the same, but also I must be held to know or intended to have the clothes in my bag. The prosecution must make you sure of the physical and mental element of the verb possession, to hold me liable for being in possession of my clothes.

11. Second, the thing possessed must be an illicit drug. Under the Illicit Drugs Control Act 2004, “cannabis sativa plant materials”, commonly known as marijuana, are classified as an illicit drug. Thirdly, the prosecution must make you sure that the accused had no lawful authority to possessing an illicit drug. You must look at what the accused allegedly did, and the surrounding circumstances to decide this issue. The accused can escape liability if he proves on the balance of probabilities that he had lawful authority to possessing the illicit drug.

**F. THE PROSECUTION’S CASE**

12. The prosecution’s case were as follows. On 20 July 2018, Mr. Inoke Siva (DW1) was residing at Matasawalevu Village in Nakasaleka, Kadavu. He was married with 6 children, three boys and three girls, aged between 24 and 13 years old. He was a subsistence farmer. According to the prosecution, on 20 July 2018, a Friday, Mr. Siva and 7 others, left Kadavu in a fiber glass boat for Suva. They left at 1 pm and arrived in Suva at 3 pm.

13. According to the prosecution, Mr. Siva was allegedly seen disembarking from the fiber glass boat at Muanikau foreshore, carrying a red and white stripe bag. According to prosecution, Mr. Siva allegedly hid the bag among the mangrove swamp and came to the main road. The police had somehow being forewarned. They apprehended Mr. Siva at the road, and later allegedly recovered the red and white stripe bag from the mangrove. The bag was allegedly found to contain some plant materials. The police later had the same analyzed and confirmed to be 15 kg of cannabis sativa.
14. Mr. Siva was investigated. He was caution interviewed by police on 23 July 2018. He allegedly admitted the offence. He was later charged with the unlawful possession of 15 kg of cannabis sativa. 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**

15. On 3 March 2020, the first day of the trial proper, the information was put to the accused, in the presence of his counsel. 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 give sworn evidence and called his daughter (DW2) as his only witness. That was his right.
16. The accused's case was very simple. On oath, he denied the allegation against him. He admitted he came from Kadavu on a fiber glass boat on 20 July 2018, with 7 others. He admitted they left Kadavu at 1 pm and arrived at the Muanikau foreshore at 3 pm. He admitted he was apprehended by police at Muanikau. He admitted he

was caution interviewed by police at Totogo Police Station on 23 July 2018. He asks you, as assessors and judges of fact, to reject his alleged confession to police, because they forced the same out of him. He said, he was repeatedly assaulted by police. He appeared to say that the red and white stripe bag containing alleged illicit drugs were not his.

17. As a result of the above, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged. That was the case for the accused.

## **H. ANALYSIS OF THE EVIDENCE**

### **(a) Introduction:**

18. 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 Agreed Facts, then 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 Agreed Facts:**

19. The parties had submitted an "Agreed Facts", dated 2 March 2020. A copy of the same is with you. Please, read it carefully. There are 7 paragraphs of "Agreed Facts". Because the parties are not disputing the same, you may treat the same as established facts, and that the prosecution had proven those facts beyond a reasonable doubt.

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

20. No one saw Mr. Siva actually carrying the white and red stripe bag containing 15 kg of cannabis sativa from the fiber glass boat, to where it was allegedly hidden in the Muanikau foreshore mangrove, on 20 July 2018. This was so, despite Sgt 2506 Tevita (PW1) saying he saw two people disembarking from the fiber glass boat, at the material time, and one of them carrying a red and white stripe bag. This was obviously a difficulty for the prosecution. In overcoming this difficulty, the prosecution is relying on two types of evidence to connect Mr. Siva to the crime alleged. First, his alleged confession to police, when caution interviewed on 23 July 2018. Second, circumstantial evidence. We will start with his alleged confession.
21. Detective Sergeant 2391 Ulaiasi Robanakadavu (PW2) caution interviewed Mr. Siva on 23 July 2018 at Totogo Police Station, in the "i-taukei" language. He recorded the same with his own hand writing. He later translated the same into the English Language. Both documents were tendered in evidence as Prosecution Exhibit No. 1 (the i-taukei version) and Prosecution Exhibit No. 2 (the English typed version). Please, read the same carefully. You have heard Detective Sergeant Ulaiasi give evidence on Wednesday, 4 March 2020, on how he caution interviewed Mr. Siva at Totogo Police Station. He said, he asked Mr. Siva 58 questions and he gave 58 answers. He said, he started at 8.15 pm and concluded at 10 pm. He said, the interview was done in 1 hour 45 minutes. He said, he gave Mr. Siva his legal rights - see Questions and Answers 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 54, 55, 56, 57 and 58. These questions and answers appear to speak for themselves. Sergeant Ulaiasi said Mr. Siva admitted the offence when caution interviewed. Please refer to questions and answers 22, 23, 24, 27, 28, 30, 31, 32, 37, 40, 43, 44, 45, 46, 47, 49, 50, 52 and 53. In question and answer 56, Sergeant Ulaiasi said Mr. Siva gave the above confession out of his own free will and they were the truth.

22. You had heard the evidence of the four police officers who gave evidence in this case, that is, Sergeant Tevita (PW1), the arresting officer, Sergeant Ulaiasi (PW2), the caution interview officer and investigation officer, DC Shelvin (PW3), the witnessing officer and DC Akuila (PW6), the exhibit writer. When considering the above alleged confession, 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 as alleged by the police above. 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 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.
23. If you accept the accused's alleged confession to police, then you must find the accused guilty as charged. If otherwise, you may need to consider the other type of evidence the prosecution is relying on, that is, circumstantial evidence.
24. Reference has been made to the type of evidence which you have received in this case. Sometimes an assessor is asked to find some fact proved by direct evidence. For example, if there is reliable evidence from a witness who actually saw an



accused commit a crime; if there is a video recording of the incident which plainly demonstrates his guilt; or if there is reliable evidence of the accused himself having admitted it, these would be all good examples of direct evidence against him. On the other hand, it is often the case that direct evidence of a crime is not available, and the prosecution relies upon circumstantial evidence to prove guilt. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the defendant which they say when taken together will lead to the sure conclusion that it was the defendant who committed the crime. It is not necessary for the evidence to provide an answer to all the questions raised in a case. You may think it would be an unusual case indeed in which an assessor can say "We now know everything there is to know about this case". But the evidence must lead you to the sure conclusion that the charge which the accused faces is proved against him. Circumstantial evidence can be powerful evidence, but it is important that you examine it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution's case. Finally, you should be careful to distinguish between arriving at conclusion based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence nor you should do that.

25. Now, we will consider the type of evidence the prosecution is relying upon of the various circumstances relating to the crime and the accused which they say when taken together will lead to the sure conclusion that it was the accused who committed the crime. First, you will have to look at the accused's alleged confession

to the police when he was caution interviewed on 23 July 2018. Second, the accused was seen disembarking from a fiber glass boat at Muanikau foreshore on 20 July 2018. Third, Sergeant Tevita (PW1) saw two persons carrying a white and red stripe bag from the fiber glass boat, at the material time. Fourth, immediately thereafter PW1 detained the accused on suspicion of illicit drug activities. Fifth, the police previously received information on the fiber glass boat brining in drugs from Kadavu. Sixth, a search of the Muanikau mangrove swamp revealed the presence of a white and red stripe bag with plant materials in the same. Seventh, the plant materials were later analyzed to be 15 kg of cannabis sativa. What do the above circumstantial evidence tell you? How you answer the above is entirely a matter for you.

26. If you accept the prosecution's version of events, you must find the accused guilty as charged. If otherwise, you must find him not guilty as charged. It is a matter entirely for you.

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

27. I had summarized the accused's case to you from paragraphs 15 to 17 hereof. I repeat the same here. You had heard his evidence and his witnesses' evidence yesterday. I am sure his evidence is still fresh in your minds. I will not bore you with the details, but will highlight his point of contention. He denied the allegation against him on oath. He said, the police threw 20 strong punches against him. He said, he was scared and it appeared that was why he confessed. He said, his confession was not voluntarily given and it was forced out of him by police. He said, his alleged confession was not true. He said, he was not given his legal rights by police.

28. If you accept the accused's version of events, you must find him not guilty as charged. If you reject the same, you must still consider the strength of the prosecution's case and decide accordingly. It is a matter entirely for you.

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

29. Six witnesses gave evidence for the prosecution:

- (i) Sgt 2506 Tevita Ketedromo (PW1),
- (ii) D/Sergeant 2391 Ulaiasi Robanakadavu (PW2),
- (iii) PC 4378 Shelvin (PW3),
- (iv) Ms. Eka Maravou (PW4),
- (v) Ms. Miliana Werebauinona (PW5),
- (vi) DC 3090 Akuila Debalevu (PW6).

30. Two witnesses gave evidence for the defence:

- (i) The Accused (DW1),
- (ii) Ms. Tarisi Radinimalata (DW2).

31. The prosecution submitted the following exhibits:

- (i) Prosecution Exhibit No. 1 – Accused's Interview Notes (i-taukei),
- (ii) Prosecution Exhibit No. 2 - Accused's Interview Notes (English),
- (iii) Prosecution Exhibit No. 3 – PW5's 21.7.18 letter
- (iv) Prosecution Exhibit No. 4 – Analysis of Cannabis & Certificate of Analysis
- (v) Prosecution Exhibit No. 5 – Wrapped Drugs.

32. 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**

33. 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.

34. Your possible opinions are as follows:

(i) Unlawful Possession of Illicit Drugs: - Guilty or Not Guilty

35. 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.



  
Salesi Temo  
JUDGE

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