

**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 and 3 March, 2020.**

**Ruling : 3 March, 2020.**

**Written Reason: 9 March, 2020.**

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**WRITTEN REASONS FOR VOIR DIRE RULING**

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1. On 2 March 2020, the accused was charged with the following information:

***“Statement of Offence***

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

***Particulars of Offence***

***INOKE SIVA on the 20<sup>th</sup> day of July, 2018 at Suva in the Central Division, without lawful authority, was found in possession of an illicit drug namely cannabis sativa, weighing 15 kilograms.”***

2. In the course of the police investigation, the accused was caution interviewed by police at Totogo Police Station on 23 July 2018. During the caution interview, the accused allegedly admitted the above offence.
3. On 2 and 3 March 2020, in a voir dire hearing, the accused, through his counsels, challenged the admissibility of the police caution interview statements. He alleged that the police forced the above alleged confession out of him, by repeatedly assaulting him.
4. The prosecution called five witnesses, all police officers. The defence called only the accused as their witness. Altogether, there were six witnesses, five for the prosecution and one for the defence, on whose evidence the court will have to make a decision. I heard the parties on 2 and 3 March 2020. After considering the evidence, I ruled the accused's caution interview statements, as admissible evidence. I said, I would give my reasons later. Below are my reasons.
5. The law in this area is well settled. On 13<sup>th</sup> July 1984, the Fiji Court of Appeal in **Ganga Ram & Shiu Charan v Reginam, Criminal Appeal No. 46 of 1983, said the following. "...it will be remembered that there are two matters each of which requires consideration in this area. First, it must be established affirmatively by the crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – what has been picturesquely described as the "flattery of hope or the tyranny of fear" Ibrahim v R (1941) AC 599, DPP V Ping Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police**

**behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ C-E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account....”**

6. I have carefully listened to and considered the evidence of all the prosecution and defence’s witnesses. I have carefully examined their demeanors when they were giving evidence in court. I have carefully considered the parties’ closing submissions.
7. The voluntariness of the accused’s caution interview statements were disputed by the parties. Accused said, police officers punched him 20 times on the ribs. He said, he was injured as a result. He said, he was afraid, and as a result confessed to the police. He said, his alleged confession were not voluntary. He also alleged the police fabricated his answers.
8. The police witnesses, on the other hand, denied the above allegations. They said, the accused was given his rights and the standard rest and meal breaks, while in police custody. They said, he was not assaulted or threatened while in police custody. They said, the accused gave his statements voluntarily.
9. After considering both the prosecution and defence’s case, I came to the conclusion that the accused gave his interview statements to the police voluntarily and out of his own free will. On the evidence, I also found that the police were not unfair to the accused, while he was in their custody. Even the accused admitted under cross-examination, that the police caution interview officer was not harsh to him, while he was in his custody.

10. The above were the reasons why I ruled the accused's caution interview statements as admissible evidence. The acceptance or otherwise of the accused's interview statements, at the trial proper, will be a matter for the assessors. I rule so accordingly.



  
**Salesi Temo**  
**JUDGE**

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