

**IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

HIGH COURT CRIMINAL CASE NO: HAC 002 OF 2010

BETWEEN:

**STATE
PROSECUTION**

AND:

**SACHIN DEO
ACCUSED PERSON**

**Counsel: State - Mr. Savou
Accused Person - In Person**

Date of Summing Up - 09th August 2011

Date of Judgment - 10th August 2011

JUDGMENT

1. After deliberating for 1 hour the assessors returned their unanimous opinion that the accused is not guilty of the following offences.

"FIRST COUNT

Statement of Offence

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

Particulars of Offence

SACHIN DEO s/o Isht Deo on the 30th day of December 2009, at Suva in the Central Division, without lawful authority, possessed 1162.7 grams of Cannabis Sativa, an Illicit Drug.

SECOND COUNT

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUG: Contrary to Section 5 (a) of the Illicit Drugs Control Act, 2004.

Particulars of Offence

SACHIN DEO s/o Isht Deo on the 30th day off December 2009, at Suva in the Central Division, without lawful authority, cultivated 483.6 grams of Cannabis Sativa, an Illicit Drug."

2. I adjourned overnight to consider my judgment. I direct myself in accordance with my summing up to the assessors and the evidence adduced at the trial.

3. Prosecution called 6 witnesses.

On the 1st Count Police officers Detective Constable Sailasa and Detective Constable Jona testified as to how the dried leaves believed to be Marijuana were found.

4. Dectective Sailasa's evidence was that when they searched the house of accused, D/C Jona found the drugs believed to be marijuana under the accused's mother's bed. Witness D/C Sailasa had found a maroon bag containing money inside a blue bucket under the same bed. However D/C Jona's evidence was that under the bed he saw a brown carton inside of which there were one black plastic and a maroon S.Nagindas labeled plastic. He said that in the black plastic there were 16 parcels and in the maroon plastic there were 2 parcels. He did not mention about a blue bucket.

5. It is for the prosecution to prove beyond reasonable doubt from where and how the drugs were found.

6. D/C Jona was the officer who had taken the drugs to the Government Analyst. He said that 2 parcels of dried leaves and 2 parcels of green plants were taken to Koronivia Research Centre. He further said he took 18 parcels (16 parcels in one parcel and 2 parcels in another) of dried leaves to Koronivia and he himself handed over them to the Government Analyst. However, government analyst giving evidence said although the police officer had written as 18 parcels of dried leaves in the advise letter to the analyst, police officer brought 19 parcels of dried leaves.

7. Although the accused was not represented by a counsel the position taken by the accused when cross examining the witnesses was that these were not the drugs taken by the police from his house. He further put to the witness for the prosecution that although the drugs did not belong to him he took the blame.

8. Count No. 1 alleges that the accused possessed 1162.7 grams of Cannabis and Count No. 2 alleges that the accused cultivated 483.6 grams of cannabis sativa. However, the government analyst says that there were 1522.3 grams of cannabis dried leaves and 483.6 grams of cannabis plants. Therefore government analyst has received about 359.6 grams more than what the accused had alleged to have possessed according to the indictment. Further the government analyst has received 19 parcels of dried leaves although D/C Jona says that he handed over 18 parcels to government analyst. Hence there is doubt as to whether the drugs detected from the

house of the accused were the same drugs taken to the government analyst.

9. On detecting the plants from the garden, the evidence of D/C Jona and SP Rajeshni Mala was totally contradictory. D/C Jona in his evidence said that he first went to the back yard, saw the plants, called the accused, uprooted the 6 plants and then went inside the house from the back door. Thereafter they have detected the dried leaves and money under the accused's mother's bed. After that he then had called SP Rajeshni Mala.

10. SP Rajeshni Mala's evidence was, that she went there on receiving a telephone call from Sailasa. She had counted the money in the sitting room and had then come out of the house and detected the plants. She further said that the plants were uprooted in front of her.

11. One cannot expect detective police officers evidence to be contradictory as to how they detected the plants or dried leaves.

12. It is evident that in the same house apart from the accused, his mother, brother and brother's family lived. The dried leaves were found under the mother's bed according to the prosecution witnesses.

13. Therefore the prosecution relied on the confession made by the accused in his caution interview statement to prove the exclusive possession of the drugs by the accused. The burden is entirely on the prosecution to establish not only the voluntariness of the confession, but also the truthfulness of it. In assessing the truthfulness of the confession the Court has to consider the confession with the rest of the evidence of the prosecution witnesses in material parts relevant to the charges in the case.

14. Evidence of the prosecution witnesses as to the detection of the dried leaves and plants is totally contradictory as mentioned above. The quantum of the dried leaves alleged to have been recovered from the house of the accused is also materially contradicted by the government analyst. The extent of contradictions as mentioned above is such that it affects the truthfulness of the confession alleged to have been made by the accused.

15. It is of vital importance that the prosecution establishes its case to show that what contained in the confession of the accused is truthful. In this case the evidence as presented by the prosecution is capable of creating a reasonable doubt on the detection of the drugs and also on its quantum and the identity.

16. In the light of the above inconsistencies, I am of the view that the assessors were entitled to give their opinions that there is a reasonable doubt as to the guilt of the accused in relation to the charges in the two counts.

17. For the above reasons I accept the unanimous opinions of the assessors that the accused is not guilty of both counts 1 and 2.

18. Therefore I acquit the accused on Counts 1 and 2 accordingly.

Priyantha Fernando
Judge
10/08/2011.