IN THE SUPREME COURT OF FIJI
[APPELLATE JURISDICTION]

CRIMINAL PETITION NO. CAV 0006 of 2026
[Court of Appeal No. AAU 065 of 2021]

BETWEEN : **THE STATE**

Petitioner

AND : **JOSHUA AZIZ RAHMAN**

Respondent

Counsel : **Ms. N. Tikoisuva and Ms. S. Shameem for the Petitioner**
Mr. D. Sharma and Ms. G. Fatima for the Respondent

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Petitioner

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Coram : **The Hon. Mr. Justice Salesi Temo, President of the Supreme Court**
The Hon. Mr. Justice Anthony Gates, Judge of the Supreme Court
The Hon. Mr. Justice William Young, Judge of the Supreme Court

Counsel : **Mr. D. Sharma and Ms. G. Fatima for the Petitioner**
Ms. N. Tikoisuva and Ms. S. Shameem for the Respondent

Date of Hearing : **06 August 2026**

Date of Judgment : **28 August 2026**

JUDGMENT

Temo, P:

[1] I have read His Lordship Justice A. Gates' judgment and I agree with the same.

Gates, J:

[2] This is a possession of cocaine case, in which both prosecution and defence have lodged petitions. On the 27^{th} of February 2026, the Court of Appeal had quashed the conviction of Mr Rahman for a single count of unlawful possession of illicit drugs contrary to section 5(a) of the Illicit Drugs Control Act 2004 and section 46 of the Crimes Act 2009. The Court set aside the sentence which had been 20 years imprisonment, after discount for the time spent on remand, with a non-parole period of 14 years. A new trial was ordered to be held as soon as possible.

[3] On the 10^{th} of April 2026, Mr Rahman's lawyers lodged a petition to this Court seeking the setting aside of the order for re-trial, and seeking in substitution, an order of acquittal.

[4] Prior to that, on the 13^{th} of March 2026, the State had lodged its own petition. To avoid confusion over the two petitioners, I shall refer to Mr Rahman as the petitioner, and for both litigation roles I shall refer simply to the State.

[5] The State in its petition raised three grounds. It raised the elements to be proved to establish possession. It said the Court had failed to consider all of the material and the overwhelming evidence led by the prosecution to prove both the physical and fault elements to the standard beyond reasonable doubt. The State also raised the factual presumption set out in

section 32 Illicit Drugs Control Act, and the legal burden of proof upon the accused in such cases [sections 57 to 60 Crimes Act 2009]. The State in this Court, claimed the trial judge had correctly interpreted the burden to be applied in the factual presumption of section 32. The State's petition also raised the application of the proviso in section 23(1)(a) of the Court Appeal Act, and the need to have regard to all other material factors before deciding whether there had been a substantial miscarriage of justice.

Brief facts of the case

[6] On the night of 14th of February 2019 at about 8pm, a team of police officers with the assistance of two trained sniffer dogs searched a residential property at Caubati Road under a judicial warrant. The police found thirty nine bars of a powdery substance wrapped in parcels and concealed inside the master bedroom of the property. The substance was scientifically tested by a government analyst. The substance was found to be cocaine, 39.5 kilograms in all.

[7] As a result of the discovery of cocaine, the petitioner was charged with unlawful possession.

[8] The search conducted on the 14th of February 2019 had been at the property, leased to Mr Tallat Rahman, the petitioner's father. One bar of cocaine was found in the bedside drawer of the master bedroom, Mr Tallat's bedroom. A further 38 bars of cocaine were found under the bed base in the same bedroom. Those bars were sitting on black plastic. It was part of the admitted facts that these bags were properly handled upon police seizure. Eventually the powder was analysed and found to be cocaine. The litigation issue was possession, and whether the petitioner was criminally involved with his father, in whose bedroom the drugs had been discovered. There was no issue concerning "without lawful authority".

[9] The prosecution called 20 witnesses and tendered 35 exhibits. These included handwritten notes with names listed and sums, possibly sums of money, written alongside.

[10] The property in question was owned by Ratu Cokanauto. He was not called as a witness by either party. There were two caretakers who did testify. They were Alfred Rounds and Alanieta Masitabua. They knew the layout of the house. They lived at the caretaker's flat at the back. They knew that the master bedroom was occupied by Tallat, while the room directly opposite was occupied by the petitioner. A third bedroom was usually occupied by guests. They said Tallat stayed continuously at the house after taking over the tenancy in 2017, while the petitioner used to come and go. They saw drinking parties being held at the house at the time when the petitioner was around.

[11] Poseci Rawaqa was engaged as a night security guard at the house from the 31st of January 2019. He met the petitioner who was introduced to him by his father Tallat. He last saw Tallat on the 7th of February 2019 when Tallat was to leave the next day for Nadi to fly to New Zealand. He last met the petitioner on the 10th of February 2019 when the petitioner returned home in the morning, drunk.

[12] Inspector Vuniwaqa was based at the Transnational Crime Unit at the Fiji Revenue and Customs Services. Upon receiving information from the Australian Federal Police concerning the arrival of two men in Nadi from Sydney, he carried out a covert surveillance on the 9th of February 2019. Those men, referred to by the Australian Police as persons of interest, were one Mangolini and one Sam Amine. Amine was a Fiji resident and owned a property at Fantasy Island. They drove in a rental vehicle from Nadi to Suva. On their way, they picked up a third person at Maui Bay, Samuel Veisuvuraki.

[13] They went to a coffee bar, Gloria Jeans at Damodar City, and met the petitioner. The petitioner provided his own explanation during his interview and in his sworn evidence as to how he met these three persons. He did not know their names he said but thought he recognised their faces. Corporal Lal from the same unit took over surveillance from there. The four men talked for a short while, then all four left in the same vehicle. They went to Nandos at Laucala Bay. They had lunch together. Corporal Lal photographed them as they exited afterwards.

[14] The petitioner was arrested from the Mercure Hotel, Namaka on the 12th of February 2019. His hotel room was searched and he also suffered a body search. Police witnesses involved testified that the searches were for a legitimate reason, about which they were further cross-examined at the trial.

[15] Sniffer dogs accompanied the officers for the search on the house. This was on the 14th of February 2019. As a result, a package containing drugs was located in a bedside drawer.

[16] On the 17th of February 2019, Inspector Bari formally charged the petitioner. To this charge, the petitioner answered and said:

> *""I don't have any knowledge about the things I am charged with for being in possession of drugs and do not even reside full-time in the country they were found in, let alone reside full-time in the house where they were found. I only stay there when I'm in Suva with my father"."*

[17] The petitioner was interviewed under caution. The interview was suspended for him to consult his lawyer and for overnight rest. The police interviewer said the purpose of the interview initially was to ascertain the petitioner's connection with Veisuvuraki and Mangolini.

[18] In the interview the petitioner disclosed that the purpose of his visit to Fiji was to explore his business options. He admitted he ran into three persons at Gloria Jean's, Damodar City, on Saturday 9th February 2019. He said he did not know their names but their faces looked familiar. The petitioner said he had coffee with them and then on their invitation he accompanied them in their vehicle to Nandos for lunch. The petitioner said that after having lunch the three persons dropped him off at Damodar City. He did not meet them again. His evidence in effect said this was an entirely incidental unplanned meeting.

[19] After searching the petitioner's room when nothing was found, Corporal Dutt returned to the master bedroom to switch off the light and the air conditioner. He was unable to reach

the switch. He moved the mattress slightly and climbed over the bed. When he climbed onto the wooden top, his leg nearly went inside. With another officer, they then removed the mattress. Underneath, they saw a board placed underneath the mattress. It had visible screw marks but without any screws fixed to the board. Corporal Dutt lifted the board. He saw a cavity filled with wrapped parcels stacked on top of a black plastic bag. The parcels contained 38 bars, later found to contain cocaine.

[20] A second interview was then undertaken, this time recorded by video. The petitioner denied any knowledge of the drugs, either in the bed cavity or in the bedside drawer in his father's bedroom.

[21] Ms Linton Finiasi an accounts officer at Lateef and Lateef Lawyers, tendered certain documents that were uplifted from the law firm under a warrant. She confirmed in evidence that the documents were part of the records of the law firm. The first document was an email from Tallat Rahman dated 15th May 2015, instructing the law firm to transfer money into his Fijian bank account. She was unaware of the purpose of the payments. There was evidence from an immigration officer to detail the in and out visits to Fiji by both the petitioner, and more frequently, by the father.

[22] Detective Senior Sergeant Damien Espinosa of the New Zealand Police gave evidence via Skype from the Fiji High Commission in Wellington.

[23] Sergeant Espinosa said that on 22 December 2018 Tallat Rahman was seen meeting a Mr Sipene Timu at the Four Points by Sheraton Hotel in Auckland City. He said that later that evening the CCTV footage from the Four Points showed Tallat Rahman and Joshua Rahman exiting the hotel with Tallat carrying a backpack. Mr Timu had earlier been delivered a bag with cash by Tallat and the petitioner. Mr Timu had pleaded guilty to importation of methamphetamine in relation to the consignment addressed to one Ben Hura of 9 Hendry Avenue, the same name and address contained on a note found in the house of the petitioner and Tallat Rahman.

[24] Sergeant Espinosa said that on 4 February 2019 a consignment arrived in New Zealand from USA via DHL. The consignment was addressed to Necai Little of 1/4 Crewe Close, Albany, Auckland with a phone contact number 0214174269. The package was delivered and it was intercepted by New Zealand Customs. Tallat Rahman pleaded guilty in New Zealand to importing methamphetamine in relation to that package.

[25] Sergeant Espinosa said while in New Zealand Tallat Rahman used a cell phone number 0204168708. He said that that phone was used by Joshua Rahman when Tallat Rahman left New Zealand.

[26] Sergeant Espinosa said in the course of his investigation he discovered an Australian telephone number belonging to Samuel Veisevuraki and a cell phone number belonging to Mangolini. He said the New Zealand Police obtained an extraction report from the Fiji Police on the phone numbers and carried out an analysis of the data. The data analysis of the phones revealed Mangolini was called Karate and that Veisevuraki referred to himself as Mr White. He said that Mangolini was known as Veisevuraki's associate.

Section 32 Factual Presumption

[27] Section 32 of the Illicit Drugs Control Act provides:

> *"Where in any prosecution under this Act it is proved that any illicit drug, controlled chemical or controlled equipment was on or in any premises, craft, vehicle or animal under the control of the accused, it shall be presumed, until the contrary is proved, that the accused was in possession of such illicit drug, controlled chemical or controlled equipment."*

[28] In this case it is claimed the petitioner was in joint possession of the illicit drugs with his father. He had joint control of the premises, the house in Caubati Road, and gave at the least, some encouragement or assistance to his father in his involvement with drugs.

[29] In his defence the petitioner denied knowledge of the placement or existence of the cocaine in his father's residence. He also denied joint control of the premises.

[30] The Crimes Act defines the various proofs applicable in criminal trials [sections 57-61]:

> *"57. – (1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*
>
> *(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*
>
> *(3) In this [Act] –*
>
> *"legal burden" in relation to a matter, means the burden of proving the existence of the matter.*
>
> *58. – (1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.*
>
> *(2) Sub-section (1) does not apply if the law creating the offence specifies a different standard of proof.*
>
> *59. – (1) Subject to section 60, a burden of proof that a law imposes on a defendant is an evidential burden only.*
>
> *(2) A defendant who wishes to deny criminal responsibility by relying on a provision of the [Act] (other than section 28) bears an evidential burden in relation to that matter.*
>
> *(3) A defendant who wishes to rely on any exception, exemption, excuse. qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.*
>
> *(4) The exception, exemption, excuse, qualification, or justification need not accompany the description of the offence.*
>
> *(5) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.*
>
> *(6) The question whether an evidential burden has been discharged is one of law.*
>
> *(7) In this [Act] –*
>
> *"evidential burden", in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.*

60. A burden of proof that a law imposes on the defendant is a legal burden if and only if the law expressly –

(a) specifies that the burden of proof in relation to the matter in question is a legal burden; or

(b) requires the defendant to prove the matter; or

(c) creates a presumption that the matter exists unless the contrary is proved.

61. A legal burden of proof on the defendant must be discharged on the balance of probabilities."

[31] At the outset of his judgment deciding on guilt or innocence the trial judge, sitting alone without assessors, stated:

*"**Legal Principles***

[9] The principles I take into account to determine the verdict are as follows.

[10] The Accused is presumed to be innocent. The burden to prove the charge is on the prosecution. Each element of the charge must be proved, but not every fact of the story.

[11] The prosecution must prove the charge beyond a reasonable doubt. That simply means that I must feel sure of the Accused's guilt before convicting him. If I entertain a reasonable doubt of guilt, I must find him not guilty of the charge.

[12] The burden to prove the charge remains on the prosecution throughout the trial unless the law expressly specifies that the burden of proof in relation to a matter in question is a legal burden on an accused, or requires the accused to prove a matter, or creates a presumption that a matter exists unless the contrary is proved. Whenever there is a reverse burden on an accused, he is required to discharge that burden on the balance of probabilities.

……..

[14] In order to prove the offence of "Found in Possession of an Illicit Drug", the prosecution must prove beyond reasonable doubt that on the date and place the Accused was in possession of an illicit drug, without lawful authority.

……..

[18] There is a factual presumption provided by section 32 of the Illicit Drugs Control Act that when any illicit drug is found on any premises under the control of the accused, the accused is presumed to be in possession, until the contrary is proved.

[19] Whenever an issue is raised by an accused that he didn't know or believe or had reason to suspect that the premises under his control had an illicit drug of some sort, the onus is on him to show on the balance of probabilities that he neither believed nor suspected nor had reason to suspect that the substance found on the premises was an illicit drug. In order words, it is for the Accused to show that it is more likely than not that he didn't know or believe or had reason to suspect that the premises under his control had an illicit drug of some sort."

[32] When concluding his judgment, the judge does not again refer to the factual presumption. He simply finds the various accounts given by the petitioner to be implausible. He ended his judgment by saying:

"[166] The evasiveness and contradictions in the evidence of the Accused lead me not to believe his account that he didn't know or believe or had reason to suspect that the house he was staying had an illicit drug.

[167] On the contrary I find the prosecution has rebutted the Accused's evidence that he didn't know or believe or had reason to suspect that the house he was staying had an illicit drug. The only use I make of the evidence of the Accused's involvement to the drug offences that his father pleaded guilty in New Zealand is to rebut his evidence that he didn't know or believe or had

reason to suspect that the house under his and his father's control at the relevant time had an illicit drug.

[168] I am satisfied beyond reasonable doubt an inference of guilt is the only rational conclusion available from the combined effect of all the facts proved by the prosecution.

[169] I am satisfied beyond reasonable doubt that the Accused, without lawful authority was in joint possession of an illicit drug with another between 23 January 2019 and on 14 February 2019 at Caubati in the Central Division."

[33] Subsequent to this judgment the Court of Appeal's decision in *Kumar v The State* [2023] FJCA 125; AAU132.2018 (27 July 2023) was handed down. In it, Prematilaka, J looked at a wide variety of jurisdictions as to how they had handled a reverse burden. He concluded that those jurisdictions applying common law systems similar to that of Fiji have operated satisfactorily without a reverse burden of proof. The conviction was quashed and a retrial ordered.

[34] Goundar, J in the first part of the judgment, had followed the defence burden, as set out in the Crimes Act, of proof on a balance of probabilities. Subsequently, *Kumar* decided that section 32 infringed section 14 (2) of the Constitution which provides:

"every person charged with an offence has the right:

(a) to be presumed innocent until proven guilty according to law"

[35] It was found that under section 173(1) of the Constitution, section 32 of the Illicit Drugs Control Act:

"must be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution."

[36] In a case in the same session as this case, Young, J in *Abourizk* CAV0001 of 2026 27th August 2026 suggested construing section 32 as if it read:

> *"Where in any prosecution under this Act it is proved that any illicit drug, controlled chemical or controlled equipment was on or in any premises, craft, vehicle or animal under the control of the accused, there is an evidential burden (as defined in s 57of the Crimes Act 2009) on the accused to call or point to evidence that raises a reasonable doubt as to whether that accused was in possession of such illicit drug, controlled chemical or controlled equipment."*

[37] An error occurred therefore, understandably, in the judge's interpretation of the extent of the burden cast on the defence by section 32. In concluding his judgment, he appears to have changed his mind and applied a correct standard of proof.

[38] In cases where drugs are found in a haversack being worn by an accused, possession may be more easily found as a proven fact. Then the presumption comes into being for consideration. Where the drugs are far less proximate to the accused for instance in an apartment housing four undergraduates, proof of control, knowledge, and therefore possession will be much more difficult to establish, and necessarily so. The law must be applied cautiously so as not to bind into criminality others living on the premises who may not have a degree of control and knowledge, or who have not lent another person assistance or encouragement in connection with the drugs. This was what Lord Lane C.J. had referred to in *McNamara* (1998) 87 Cr. App. R 246:

> *"first, that possession is established against the defendant once the prosecution have proved that he had in his control a package that in fact contained the drug alleged, that he knew that he had the package in his control and that he knew it contained something; and, secondly, that, once possession is thus established, an evidential burden is cast upon the defendant to bring himself within section 28(2) or (3)(b)."*

[39] Before the Court of Appeal, State counsel had conceded the error by the judge. Section 32 had to be read down and did not require proof on a balance of probabilities. It was an

evidential burden only. The accused had to point to or call evidence that raised a reasonable doubt that the accused was in possession of the illicit drug. Counsel submitted that even with a correct direction on section 32, upon the evidence presented the verdict would have been the same in this case.

What had to be proved to establish possession?

[40] In *Read v DPP* [1997] EWHC Admin 578 the defendant had appealed against his conviction for being an occupier of premises used for smoking cannabis. The appellant lived at the premises together with his common law wife and children as a family. On the facts, the Magistrate's found that the nature, extent and degree of the appellant's possession was sufficient to find that he was indeed the occupier of the premises.

[41] In *Regina v Ben Nien Tao* [1976] 63 Cr. App. R 163 the appellant was a Cambridge undergraduate living in a King's College hostel. He had been convicted of being an occupier of premises used for the smoking of cannabis. He occupied a room. Roskill LJ said, *'in every case it is a question of fact and degree whether someone can fairly be said to be the occupier.'* The nature of the offence was that those to be held responsible would be either *"the occupier"* or a person *"being concerned in the management."* A common sense interpretation was to be applied in order to arrive at who had a degree of control over the premises.

[42] In *R v Searle and others* [1971] Crim LR 592 the appellants had been on a touring holiday in a van. They were convicted of possession of a quantity of dangerous drugs. The prosecution ran the case on the basis of joint possession. The defendants gave no evidence. The Court of Appeal allowed the appeals. The mistake in summing up had been to equate knowledge with possession. Mere knowledge of the presence of a forbidden article in the hands of a confederate was not enough. Joint possession had to be established. Although there was ample evidence to justify conviction, it was impossible to say with certainty that all of the defendants were guilty, and so it was not a case in which the proviso could be applied.

[43] In the commentary it was said:

> *"If the drugs were the property of and under the exclusive control of only one of the tourists, the fact that the others were present and knew of the existence of the drugs would not be sufficient to make them guilty as abettors: Coney (1882) 8 Q.B.D. 534. It would be necessary to establish that they assisted or encouraged the possessor in some way in his possession of the drugs."*

[44] In *Bland* [1988] Crim. LR 41, the appellant B lived with R. R clearly dealt in drugs from their flat. The Court concluded that there was no evidence from which the jury could infer that B assisted R as opposed to merely having knowledge of his activities. It was a decision on a particular case on its own facts and it was wrong to evaluate it into a statement of principle. The Court said it was not laying down general rules about the evidence necessary for inferences to be drawn in respect to possession or joint enterprise in such cases.

[45] In *R v Conway and Burkes* [1994] Crim LR 826 the appellant was convicted of possessing cannabis. She was acquitted of possession with intent to supply. Her cohabitee, B, was convicted of conspiracy to import drugs, assisting a drug trafficker and possession of drugs with intent to supply. Three quantities of drugs were found at her house – 226g hidden in a cavity behind the bathroom door; 5.3g in a tobacco tin on the bedside table and 3.5g hidden in a man's shoe on top of the wardrobe. Substantial amounts of cash were also found. The appellant initially said the money had belonged to her late husband but subsequently admitted that it belonged to B.

[46] The Court allowed the appeal. Something more than knowledge must be proved:

> *"If the word "permission" is used to describe the second ingredient, it must be stressed that mere acquiescence is not enough. There must be something positive which may be express or implied but which emphasises that there must be evidence of encouragement at least, or something similar. The judge had made no reference to control of the premises. He should have given some indication of how the test,*

whether by reference to permission or any other particular phraseology, should have been applied in the circumstances of the case."

[47] R v Arshad [2002] EWCA 1549 stressed the same point. This was a case of possession of cocaine against two brothers. One pleaded guilty. They had been jointly charged. There had to be the elements proved against the appellant, namely knowledge of the presence of the drugs and having custody or some control over them:

> *"...mere knowledge of and acquiescence in his brother's possession would not be enough for a conviction and that there would have to be some measure of positive encouragement or assistance..."*

Was the evidence and circumstantial evidence sufficient to prove the case beyond reasonable doubt?

[48] I will confine myself to some only of the salient issues arising on the evidence.

[49] In many similar cases the accused declines to give sworn testimony. In this case, the petitioner agreed to be interviewed twice, and went into the witness box himself. That suggested an openness. If a person finds himself in trouble because of his association with a person who has committed a serious crime, and he knew he was not involved with that person's crime, he would make every effort to demonstrate his innocence. In his trial he does not have any burden to do so other than the evidential burden of section 32 as read down. But always the State bringing the charge must prove its allegation, and to the standard of proof beyond reasonable doubt.

[50] The evidence showed that Tallat occupied the master bedroom, and the petitioner another bedroom. When the Customs Canine Unit were deployed, the dog smelt nothing suspicious in the petitioner's bedroom, only in Tallat's bedroom. The dog detected the drugs in Tallat's bedside drawer and scented odour around the couch and the TV rack.

[51] There was no evidence suggesting that cocaine had been consumed in the house. The quantity of drugs discovered in the base of the master bedroom bed suggested that the drugs were not kept there for mere personal consumption. In support of the petitioner's case the lack of any trace of the drugs in his bedroom could give support to the defence assertion of his non-participation in his father's activities.

General Circumstances of Father and Son

[52] The petitioner said he had obtained a Bachelor's degree in business administration and finance from Okanagan College in Canada. A date of graduation was not mentioned. It appears, since he was not having to go back to Canada for studies anymore, that degree may have been completed in the year 2017.

[53] In his interview, he gave as his occupation *"consultant for Greenday Solution."* The circumstances of where this work was based and what income he earned was not provided in evidence. He said his father left him around US $40,000 in the petitioner's bank account in Canada. But in 2014 at his father's request, he had sent US $30,000 of that money to his father in Fiji. He said he had no shares in his father's company. He did not have a bank account in Fiji, though he had been travelling to and from Canada.

[54] When asked in interview, what is the purpose of your coming to Fiji? He replied *"I usually visit my dad's side of the family here in Fiji, also am trying to start a business here."* He said he was thinking of *"agriculture more on a large-scale commercial farming initially in fruits and vegetables."* He was asked if he had a business plan lodged with Investment Fiji. He replied, yes, and that it had been lodged 2 weeks before. In evidence he said he would first obtain citizenship, and then apply for funds through the Young Entrepreneurship Scheme. These two events would be likely to take a good deal of time to achieve.

[55] He did not refer to any income that he earned, nor to any regular employment he had had. But from time to time, his father handed him large cash sums for his support. For a

graduate, he seemed in no hurry to commence work. In examination in chief, the interviewing officer was asked whether during the interview, he was involved with his father's business. Corporal Dutt said the petitioner had said that he *"was just assisting him."*

[56] In the written version of that interview there is no mention of the comment about his father's business. This was in contrast to what he said in his evidence at trial, where he denied having anything to do with his father's business.

[57] In his examination in chief, he said his father paid for the rent of the property and all the outgoings, the electricity, the mowing, and the security guard. There was no mention of who paid for the meals at home and the provisioning of the house. It would appear to have been his father's responsibility.

[58] The petitioner kept his property in his own bedroom, his clothes, laptop, mobile, and passport.

[59] Because he was not employed and he had no regular job, he depended on cash handouts from his father. And yet his father's income seemed vague. There was a business called AZTEC which the father operated to import garden pots and ornamental vases. We know of at least one container unloading such garden artifacts at the property, noticed by the caretaker's wife. The supply of pots and garden vases, the petitioner said, was placed throughout the house and some stored in the basement. There was no shop for the business. It was conducted solely from the home. It does not seem to have been a successful business operation, and his father was thinking of going into solar panels, batteries, and generators.

[60] The petitioner denied having anything to do with his father's business. This was curious, since his gap year was long over, and the cash handouts from his father must have come from somewhere, towards which generation he could have lent a hand. He said his father told him that he imported some flower vases. In evidence he said he himself had nothing to do with the importation of the pots.

[61] In spite of there being reference to telephone numbers and calls, and even the use of emails, there was no evidence that any of these communication tools were examined to prove with whom the petitioner might have been in touch and at what times. The petitioner said the handwritten notes found in the house were written either by himself or his father. The judge did not believe this explanation, nor the account that the petitioner may have written down the information in the notes at the direction of his father.

<u>The Meeting with three "unknown" men at Gloria Jeans</u>

[62] The judge considered the petitioner's explanation in the caution interview and in his evidence to have been evasive and contradictory. His Lordship provided an extract from the caution interview on the meet up and later lunch at Nandos.

CPL Avinesh	You also can tell me where you were on the 9th of February 2019?
Joshua	9th of February
CPL Avinesh	It was a Saturday....
Joshua	Yeah, I was at Damodar City for majority of the day. I know I wouldn't have been at home for other portions of it....
CPL Avinesh	So did you, what time did you went from home to this?
Joshua	I am not sure. Maybe between 11 and 12, around that.
CPL Avinesh	So can you tell me again which place you went?
Joshua	Damodar City
CPL Avinesh	Damodar City
Joshua	Yeah
CPL Avinesh	So you went to any specific shop or you were just roaming around the complex?

Joshua	When I first got there I went to Mamasita's and had 2 beers with a friend there, and then I went out to Gloria Jeans to have a coffee. Sat by myself outside on the patio area. Gloria jean had ran to 3 guys but 2 of guy knew that when I got coffee he came out, I started talking to them. They asked me if I was hungry, I said yes, we went out to have lunch at Nandos restaurant in Laucala Bay. I had lunch there, then I came back to Damodar City and I went to Bad Dog Café for a couple of hours with another friend and then to my knowledge, I went home.

<u>Later</u>

Inspector Muktar	Did anybody called you to go to Gloria Jeans Coffee Shop?
Joshua	No.
CPL Avinesh	So when you went to Gloria Jeans, you met anybody?
Joshua	I went there by myself, I ordered a coffee so I went out and sat on the patio for maybe 5 minutes or 10 minutes by myself, and then there was a group of guys that came walking and they looked kind of familiar but, I don't really know names but, they walking and they walked passed me on the entrance they just said 'oh hey' and I just say hey back to them, they asked if I was sitting there by myself and I said yes. They went inside, grabbed a coffee, came outside and sat down with me because I was sitting by myself, so...
CPL Avinesh	So you didn't know them personally?
Joshua	I don't know them well, no, type of people that you know.... somebody passing, familiar face that kind of thing. I couldn't tell you what their names are
CPL Avinesh	So you can you describe or explain to me when you say familiar face, what do you mean by that?
Joshua	I mean like, if you go to bars and things like that in Fiji or in restaurant and things, you tend to see a lot of the same people around the same kind of places. So you run into somebody you may not exactly remember their name or

	know much about them, but you that you've met them before. Fiji is not a big place.
CPL Avinesh	So you are telling me that you have seen them somewhere around Fiji?
Joshua	Yeah
CPL Avinesh	So you are telling me that they are not locals, they are from overseas?
Joshua	Yeah that would be
CPL Avinesh	Can you explain to me why you are saying they are not from Fiji, they are from abroad?
Joshua	They have accents.
CPL Avinesh	Anything apart from that you think you want to tell us?
Joshua	2 of them are white.
CPL Avinesh	So who's the third guy?
Joshua	I don't know, he looks like an islander. Maybe like half Fijian and half Samoan or Maori or something like that, I don't know. He has darker skin than the other 2 guys.
CPL Avinesh	So 4 of you, did you have any chat or something, you discussed something or.... you had a meeting or something?
Joshua	Not a meeting or anything like that, we just chit chatted I don't know exactly what about but, just kind of you know, talked a bit, what random people do on a Saturday I guess.
CPL Avinesh	So if you do remember, do you know a little bit of what you talked about or discussed about, can you explain it to me?
Joshua	No, to be honest I can't remember what I was talking about with my friends at Mamasita's so....
Inspector Muktar	Have you ever talked to them on a phone or conversations, any conversation did you have before meeting them?
Joshua	No
Inspector Muktar	You saying that [inaudible 12.42.58] when you met these 3 gentlemen, and you are saying that they were familiar to you but you don't know them?
Joshua	I don't know them personally, I don't know their names, I don't know where they live, I don't know what they do that

	kind of things....recently I've met a lot of people here in Fiji.
Inspector Muktar	Then later on you accompanied them to lunch, can you explain us if I meet you today. If somebody meets you in a spur of a minute, and after that you go and have your lunch. Is there anything common, you know? Do you have anything common between you 3 or 4?
Joshua	Sorry I don't understand the question
Inspector Muktar	In a spur of a few minutes you met them at Gloria Jeans to have coffee, and after without a chat, I'm not saying you had any conversation and then suddenly you are going for a lunch at another place which is far from where you met.....
Joshua	It's pretty close by actually
Inspector Muktar	Its close but is not at the same places, and then can you explain to us if there were something common, understating between you all sitting down there?
Joshua	O don't think so. I think we just got along well and they asked if I was hungry, I was hungry so....
CPL Avinesh	So you were telling me you went along well, what you mean by that?
Joshua	I don't know sometimes you know you just, when you are sitting with people you have that, good feeling, happy laugh stuff like that.
CPL Avinesh	So how many hours and how many minutes you stayed at Gloria Jeans?
Joshua	I think 20 minutes
CPL Avinesh	So what happened after the 20 minutes?
Joshua	We went to lunch, at Nandos
CPL Avinesh	So that means the 4 of you travelled to Nandos to have lunch?
Joshua	Yeah
CPL Avinesh	How did you, were able to go to Nandos? Did you walk or you...?
Joshua	No one of the guy had a car, so he drove us
CPL Avinesh	Who had a car?
Joshua	The islander guy

CPL Avinesh: The islander guy?

Joshua: Yeah, the darker one

CPL Avinesh: So you are telling me all this while you were chatting at Gloria Jeans, you never asked his name or .....?

Joshua: No to be honest I would be embarrassed because they seem to recognize me and I seem to recognize them but I don't know who their names were and they didn't know who my name was. I didn't want to ask, I assumed that we had met somewhere before and I didn't want to bring it up again so, I get a bit socially anxious like that.

Inspector Muktar: How did you go to the Nandos?

Joshua: By a car

Inspector Muktar: ... and where did you take your seat to that car?

Joshua: When we went to Nandos I was in the passenger seat, in the front.

Inspector Muktar: Front passenger seat?

Joshua: Yeah

Inspector Muktar: Who paid the food at Nandos?

Joshua: The short little stocky hair with the baseball cap.

Inspector Muktar: Can you tell us his name?

Joshua: No

Inspector Muktar: How did you met him, he was European?

Joshua: He is a white guy

Inspector Muktar: A white guy is not European?

Joshua: True, I don't know what you mean, do you mean like from Europe?

Inspector Muktar: No. I mean [inaudible 12.47.13] he is from where. Can you tell us where he's from?

Joshua: No, not from Fiji. One of those places which has a British sounding accent

Inspector Muktar: Was his name Sam?

Joshua: I have no idea what his name was

Inspector Muktar: Do you know where he is from?

Joshua: No, I don't know for sure

Inspector Muktar: Initial meeting of a stranger on the street always a person should know whom he is talking to and where he is from. What do you have to say for that?

Joshua: That's your opinion

Corporal Avinesh: So you telling me after they tell you to go to have a meal, you just go with them?

Joshua: Not anywhere but they asked if I wanted to go for lunch at Nandos, so I knew where it was, I know it was close by, I was hungry, I wanted to try the food.

Inspector Muktar: Have you ever been to Nandos before?

Joshua: No, obviously I don't know

Inspector Muktar: Was it the first time you went to Nandos?

Joshua: In Suva, yeah

CPL Avinesh: So when you entered Nandos Restaurant which table you were sitting in?

Joshua: Beside the back area. So the counter is like here, and you just walk all the way down to that little raised up platform there like that cables on the side so it's near the washroom.

CPL Avinesh: Was it a table of 4, a table of 8 or 10?

Joshua: It's like one of those you know like that community style one, big long table with a bench and that.

CPL Avinesh: So all facing one side, or you were facing each other?

Joshua: Like 2 here and 2 here like across from each other

CPL Avinesh: So you were facing each other?

Joshua: Yeah

CPL Avinesh: 2 one side and another 2 the other side?

Joshua: Yeah, Like how we are all sitting now.

CPL Avinesh: So what meal did you ordered at Nandos?

Joshua: I had a chicken wrap

CPL Avinesh: And the other friends?

Joshua: I don't know they had some kind, they had a lot of food. I don't know, they are much bigger than I am.

CPL Avinesh: So you might have waited quite long for the food to arrive,

Joshua:	like about 20 minutes, 30 minutes?
Joshua:	No, about 5 minutes or so. It wasn't that long.
Inspector Muktar:	So once sitting and eating with 4 people who you say they are familiar and you don't know them. What was your conversation all this time?
Joshua:	I don't recall exactly.
Inspector Muktar:	Did you talk about the food, what type of food is that or, something?
Joshua:	Probably something along those lines yeah.
CPL Avinesh:	Did you meet somebody else at Nandos while you people were having your lunch?
Joshua:	No
Inspector Muktar:	Where did you go after having your lunch at Nandos?
Joshua:	They dropped me back off at Damodar City.

[63] The interviewing officer had queried in the video interview the change from drinking two bottles of beer in the morning to then going down to Gloria Jeans to have a coffee. Inspector Muktar said, *"then your mind changes to take a coffee? This is something you can say, it normally doesn't happen, but can you tell me how it happened?"*

"Joshua:	*Because I looked at my watch and I realised that it was still midday, then I though that a probably shouldn't.....continue on drinking beer at that exact time.*
Inspector Muktar:	*Did anybody called you to go to Gloria Jeans Coffee Shop?*
Joshua:	*No.*
CPL Avinesh:	*So when you went to Gloria Jeans, you met anybody?"*

[64] Or was it more likely that he had an appointment to meet up with the three men traveling down from Nadi, so he had to separate from the beer drinking at Mamacita's, and isolate

himself ready to meet up with the persons of interest involved in drugs? For drinking coffee after starting on beers is an unusual chronology and mix.

[65] The petitioner's account led the judge to disbelieve that the meeting at Gloria Jeans and Nandos was a fleeting encounter with strangers. Instead it pointed to a meeting that had been organized. The judge did not believe the petitioner in claiming he did not know the identity of the three men. The judge had a proper basis for his finding the account to be implausible.

[66] He brought it into consideration when deliberating whether this meant, the petitioner had knowledge of his father's dealings, and whether there was joint control of the residence. Crucially, the meeting was an act of assistance to his father, and so a step beyond mere acquiescence in what the father was doing.

<u>The Significance of the Notes</u>

[67] The judge did not consider it mattered whether the notes were found in the petitioner's bedroom or in the living room. He found the petitioner evasive and contradictory about the notes which were handwritten. It was sufficient that the notes were in the petitioner's handwriting. It is beyond belief that he would not know whether he or his father had written them. Essentially, he admitted they were written by himself. The account of his father dictating these words or figures, which the petitioner did not understand, was not credible. The notes linked in Karate and White, the other names used for Mangolini and Vaisevuraki. Figures are written in columns underneath both Karate and White listing what might well be drugs payments totalling $228,500 for Karate and $327,000 for White. These sums could be what is owed to or by those named. The notes tend to establish that the petitioner did know the names, the identity and the purpose of the three men at Gloria Jeans. In any event, if his father had told him to write down the names and figures, this tends to show some active participation and assistance lent to his father. For why was he so keen at times in his answers to distance himself from the handwriting?

[68] The judge set out that part of the interview when the petitioner was questioned about the notes written down. The transcript illustrates why the judge did not find his answers on this issue worthy of belief. It rebuts the accused's evidence of innocence with regard to what his father was up to at Caubati Road.

Cpl Avinesh	Mr Joshua we also found a few notes which was obtained from your room as you were with the Police Officers in you room while searching. So I just want to ask you about a few contents hear to clarify what does it actually means. Do you agree?
Joshua	Sure.
CPL Avinesh	(shows papers)
Joshua	This is don't know. Not sure.
CPL Avinesh	Can you inform me what this context '[Amaze growers/Romeo 13.36.40]'. What do you mean by that?
Joshua	I don't know, I don't think that was in my room.
CPL Avinesh	It was seized from your room with exercise books and the notepads. It was found when you were with the police officers in the room?
Joshua	Do you mind if I can see that..... because I am positive these were'nt in my, room. These ones yeah they weren't in my room.
CPL Avinesh	What about these ones?
Joshua	The notepad.
CPL Avinesh	This here?
Joshua	Yeah.
Inspector Muktar	Is this your writing on this notepad? The writing does it belong to you?

Joshua	Yeah it could be my writing yeah.
Inspector Muktar	It's your writing.thank you.
Joshua	Could be, because my dad writes very similarly.
Inspector Muktar	But can you explain if it is your writing, can you explain what is written on it?
Joshua	No.
Inspector Muktar	There are contact on this note hear, which you can tell us what it means? (hands over notepad)
Joshua	Yeah, I don't know. I'm sorry but I don't know
CPL Avinesh	What can you say about the writing, does it belong to you or?
Joshua	Yeah I would say it's either mine or my dad's handwriting.
CPL Avinesh	You said earlier that this notebooks belongs to you, notepads belongs to you which was seized from your room on top of the iron board. Do you agree?
Joshua	Yeah, there's no iron board in my room so....
CPL Avinesh	If I am corrected I think it was on top of the table?
Joshua	Yeah
CPL Avinesh	Thank you, can you tell me what does these 'karate, white, black, and orange' what does it mean to you?
Joshua	Good question, I don't really remember
CPL Avinesh	Can you tell me what this word 'orange' and the set of address down there? What does orange mean?
Joshua	No I don't know, sorry. Maybe I was taking notes of the company
CPL Avinesh	So you are telling me that you wrote all this things and it's all in your handwriting and this is your notepad. But you don't know what you wrote?
Joshua	No, I can see what I wrote but I'm saying that I couldn't, I think I might have been writing down stuff for my dad a lot, I write so....
CPL Avinesh	So you don't understand anything about what is written on top here? (shows papers)
Inspector Muktar	Can you please explain what is written? Is it a short call or something you can tell us?
Joshua	I don't know, there's a lot of stuff like this my dad asks me to

	write stuff down for him, if he would be on the phone or reading something he'd say hey just quickly write this stuff down so... This one I do know. That one I wrote for sure but, that one is also mine. This one's mine and this one's mine. Just these ones, I don't know the meaning of them. I don't deny that I wrote them down but I don't know the meaning, only these ones I do.
CPL Avinesh	So you are telling me all of these papers, you wrote it? From here and here all these are the same writing and its yours?
Joshua	Yeah most of them I wrote them, but this ones I can explain to you guys. Those ones I don't know what's the meaning of them are, anything pass of that I wrote them.
Inspector Muktar	All these which you can't explain to me contains names and addresses of people in New Zealand, Australia... so you are telling us you don't know what is this?
Joshua	No I don't any more information about that other than what you guys can read on the piece of paper
CPL Avinesh	So do you any person by the name of [Nēcani Bitu 13.42.13]?
Joshua	No.
CPL Avinesh	Do you know any person by the name of [Jack Trainer 13.42.19]?
Joshua	No.
CPL Avinesh	Any person by the name of [Mohammed Al Rasad 13.42.32]?
Joshua	No.
Inspector Muktar	Where did you get the address from?
Joshua	Like I said, sometimes my dad tells me to write stuffs down and I write.it down for him. Nothing further than that.
Inspector Muktar	You write it for your dad, but its not with him its with you all in your own
Joshua	Well that, its, in that house. He can come in and out of the house. He's just not that organized with stuffs.
Inspector Muktar	There's some amounts written here, of 'karate' is amounting to $228,500 and 'white' is $327,000. What is Karate and what is white?

Joshua	I'm not entirely sure. All I know is karate is some kind of mix martial art thing or what, but that's all I know.
Inspector Muktar	Is this white depicts for [green 13.43.47]?
Joshua	I don't know. If you want to I can explain those other notes the ones that I wrote. I can explain those ones but ...

The Visit to New Zealand

[69] Detective Senior Sergeant Espinosa was with the National Criminal Investigation Group of New Zealand Police. He was involved during 2018 and 2019 in an investigation into a drug importing syndicate. On the 9th of December 2018, a package arrived from the USA addressed to Ben Hura of 9 Hendry Avenue, Hillsborough, New Zealand, said to be *"discounted Tabletop Grid(d)le for Ben Hura."* On 19th of February 2019, a search warrant was executed at that address by Sergeant Espinosa and another police officer.

[70] He testified that Tallat Rahman was involved in that importation and had pleaded guilty to the importation of methamphetamine. A second importation was made on the 4th of February 2019, this time to a Necani Little of Crewe Close, Albany, Auckland. The search warrant was also executed at that address. Sergeant Espinosa said the package had been intercepted by New Zealand Customs. Tallat Rahman had pleaded guilty to importing methamphetamine in relation to that package also.

[71] On 22nd of December 2018, Tallat had a meeting with Sipene Timu at the Four Points by Sheraton Hotel in Auckland City. Timu handed over a backpack. Later that evening, Tallat and the petitioner departed the hotel. Tallat was seen carrying the same backpack which later Tallat gave to one Hui Wang. The bag contained cash, which was provided to Timu for the sale of methamphetamine to Wang. Mr Timu resided at 9 Hendry Avenue, Hillsborough. He pleaded guilty to importing methamphetamine, which had been delivered to Hendry Avenue. Mr Timu's name and address were on the note [PE1 8] which had been

found in the petitioner's home at Caubati Road, and which had been written by the petitioner.

[72] At the time, Tallat whilst in New Zealand had been using the cell phone 0204168708. Upon departure Tallat gave the phone to the petitioner to use in New Zealand, and he did so.

[73] The witness said that the New Zealand Police were aware that Mangolini and Veisuvuraki were associates of each other, and he gave their telephone numbers in evidence. The police also knew of their pseudonyms, namely Karate and White. All of this evidence the judge accepted, which was also supported by other evidence.

[74] The judge pointed to the involvement of the petitioner in his father's dealings. He said:

> *"[159] He made a number of trips to Fiji in 2018 to visit his father. His evidence is that he stayed with his father and that his father financially supported him by giving him allowances. He entertained his father's overseas friends on occasions by taking them out to see land for business options. He had his father's bank card when his father went to New Zealand on 8 February 2019.He admitted using his father's bank card to make a payment for the change of air tickets of his two business associates on 12 February 2019 and in return receive a reimbursement in foreign currency from them. This evidence show that the Accused had access to funds that his father kept in bank in Fiji.*
>
> *[160] The trip that the Accused made to New Zealand in December 2018 was also funded by the Accused's father, Tallat Rahman. The Accused admits staying in the same hotel with his father and that his father gave him an allowance of $2000.00 or $3,000.00 before returning to Fiji on 23 December 2018."*

[75] All of this did not lend credibility to the defence line that Tallat's drug dealing business, perhaps obscured by other business, was kept from the petitioner. The petitioner's actions pointed to a support to, and involvement with, the father. On areas of difficulty of

explanation, the petitioner in answers to police questioning was either evasive or made statements not worthy of belief.

Conclusion

[76] In the first part of the judgment the judge was in error over the presumption. At the end he corrected himself. I find the judge was justified in reaching the conclusion he did. The final opinion he reached was made without regard to the defence burden or factual presumption. It had been a routine application of his task. With the evidence and the totality of circumstantial evidence which he had accepted, it meant that he was satisfied that the prosecution had discharged its burden of proof, proof beyond reasonable doubt. This finding was open to him.

[77] Special leave is to be granted for both petitions pursuant to section 7(2)(a) Supreme Court Act. The petition of Mr Rahman is to be dismissed. The petition of the State is allowed. The conviction and sentence of the High Court are restored.

Young, J:

[78] I agree with the orders proposed by Gates J and broadly with his reasons.

[79] From my point of view, the significant aspects of the case are:

a) It was open to the trial Judge to conclude that s 32 of the Illicit Drugs Control Act 2004 was engaged.

b) Section 32 imposes only an evidential burden on a defendant. This means that in the absence of evidence pointing to a reasonable doubt whether Mr Rahman was in possession of the cocaine, the Judge was entitled, indeed required, to convict him.

c) In an early part of his judgment, the Judge, in discussing 32, did so on the basis that it imposed a legal burden (meaning that Mr Rahman was required to prove his innocence on the balance of probabilities). However, and more significantly, when the Judge came to decide the case, he did so on an orthodox basis and held that the State had proved its case beyond reasonable doubt. As I read his judgment, his erroneous views expressed in the first part of his judgment as to the effect of s 32 had no operative effect on the outcome of the case.

d) The result arrived at by the Judge was open to him. It is not very likely that Mr Rahman's father would have left him in facto control of the house containing the cocaine unless he was a participant in his drug dealing activities. And the evidence in its totality shows that this is exactly what he was.

e) On 22 December 2018, Mr Rahman had been with his father in Auckland, New Zealand at a time and place linked closely to a particular methamphetamine transaction.

f) On 9 February 2019, in Suva, Mr Rahman met two people, Giuseppe Mangolini and Samuel Veisuvuraki. These men used the codenames "Karate" and "White".

g) Notes found in the house in what the Judge held was Mr Rahman's handwriting referred to "Karate" and "White" and set out beside those codenames references to what appear to be large sums of money. The notes also include other names and addresses linked to his father's methamphetamine dealing. The meeting in Auckland on 22 December 2018 involved a methamphetamine transaction that was linked to a name and an address that are recorded in the notes.

h) Mr Rahman's attempts to explain away his meeting with Mangolini and Veisuvuraki and the notes generally were understandably rejected by the Judge.

Orders of the Court:

1. *Special leave is granted for both petitions.*
2. *Mr Rahman's petition is dismissed.*
3. *The State's petition is allowed.*
4. *The decision in the Court of Appeal is quashed.*
5. *The conviction and sentence in the High Court are restored.*

The Hon. Mr. Justice Salesi Temo
PRESIDENT OF THE SUPREME COURT

SUPREME COURT FIJI

The Hon. Mr. Justice Anthony Gates
JUDGE OF THE SUPREME COURT

The Hon. Mr. Justice William Young
JUDGE OF THE SUPREME COURT

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