

IN THE HIGH COURT OF FIJI

AT SUVA

REVISIONAL JURISDICTION

CRIMINAL REVIEW CASE NO. HAR 014 OF 2012S

STATE

VS

- 1. SAIRUSI LAVETA**
- 2. VILIMONI VAQANALAU**

Counsels : **Ms. M. Fong for the State**
Accused No. 1 in Person
Accused No. 2 in Person

Hearings : **15th February and 1st March, 2013**

Ruling : **12th April, 2013**

RULING ON REVIEW

1. On 11th February, 2012, the two accuseds appeared in the Suva Magistrate Court, on the following charge:

FIRST COUNT

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to

Section 5(a) of Illicit Drug Act 2004.

Particulars of Offence

SAIRUSI LAVETA and VILIMONI VAGANALAU, on the 6th day of February, 2012 at Balei Farm Nacomoto Village, Naceva, Kadavu in the Eastern Division, without lawful authority, cultivated 86 plants 5000 grams of Cannabis Sativa, an Illicit Drug.

SECOND COUNT

Statement of Offence

UNLAWFUL POSSESSION OF ILLICIT DRUGS: Contrary to Section 5(a) of Illicit Drug Act, 2004

Particulars of Offence

VILIMONI VAGANALAU, on the 6th day of February, 2012, at Nacomoto Village, Naceva, Kadavu, in the Eastern Division without lawful authority, in possession of dried leaves weighing 1.4 grams known as Cannabis Sativa, an Illicit Drug.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

SAIRUSI LAVETA, on the 6th day of February, 2012, at Balei Farm, Nacomoto Village, Naceva, Kadavu, in the Eastern Division without lawful authority, in possession of dried leaves weighing 185.5 grams known as Cannabis Sativa, an Illicit Drug.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

SAIRUSI LAVETA, on the 6th day of February, 2012, at Balei Farm, Nacomoto Village, Naceva, Kadavu, in the Eastern Division without lawful authority, in possession of 3586 Indian hemp seeds weighing 48.9 grams, an Illicit Drug.

2. Both accuseds were unrepresented. When their right to counsel was put to them, they waived the same. The charge was read and explained to them in the “i-taukei” language. Accused No. 1 pleaded guilty to counts no. 1, 3 and 4; while Accused No.2 pleaded guilty to counts no. 1 and 2.
3. The prosecution’s summary of facts was read in court on 27th June, 2012. On count no. 1, it was submitted that, both accuseds, on 6th February, 2012, at Balei Farm, Naceva, Kadavu, were found to be cultivating 86 plants of Indian hemp. The plants weighed a total of 5,000 grams. On count no. 2, it was said that, accused no. 2 was found in possession of dried leaves of Indian hemp, weighing 1.4 grams. On count no. 3, it was said that, accused no. 1 was found in possession of dried leaves of Indian hemp, weighing 185.5 grams. On count no. 4, it was said, accused no.1 was found in possession of 48.9 grams of Indian hemp seeds. All the above offendings to count no. 2, 3 and 4 occurred on 6th February, 2012, at Naceva Kadavu. Both accuseds admitted the above summary of facts. The court found them guilty as charged, and convicted them accordingly.
4. On 29th June, 2012, the court delivered its sentence. The court referred to the binding Court of Appeal decision in **Kini Sulua, Michael Ashley Chandra v State**, Criminal Appeal No. AAU 0093 of 2008 and Criminal Appeal No. AAU 0074 of 2008. On count no. 1, the learned Magistrate sentenced both accuseds to 6 years 3 months [75 months]. On count no. 2, accused no. 2 was sentenced to 6 months imprisonment. On count no. 3, the court “refrained” from sentencing accused no. 1 because there were no supporting facts in the summary of offence. On count no. 4, the court sentenced accused no. 1 to 12 months imprisonment. All the above sentences were

made concurrent to each other. The final sentence for both accuseds were a sentence of 6 years 3 months [75 months] each, with a non-parole period of 2 years 11 months [35 months] each.

5. After carefully reading the court record, including the learned Magistrate's sentencing remarks, it would appear that the learned Magistrate failed to follow the binding authority of **Kini Sulua, Michael Ashley Chandra v The State** (supra). For a start, count no. 1 was a category 4 drug offence. It involved an allegation that both accuseds were cultivating 86 plants of Indian Hemp, weighing 5,000 grams, on 6th February, 2012. The tariff for this category is a sentence between 7 to 14 years imprisonment. It is the most serious of the four categories mentioned in **Kini Sulua, Michael Ashley Chandra v State** (supra). Count No. 1 is only triable in the High Court. What the learned Magistrate should have done, was to transfer count no. 1 to the High Court for trial.
6. Count No. 2 and 4 were category 1 drug cases. The weight of the drugs found on the accuseds were less than 100 grams. The courts are encouraged to pass non-custodial sentences for those in this category. Six months imprisonment in count no. 2 for possessing 1.4 grams of Indian Hemp is unjust, and flies in the face of the abovementioned Court of Appeal authority. Likewise, the sentence of 12 months imprisonment for possessing 48.9 grams of Indian hemp seed in count no.4, is unjust and flies in the face of the abovementioned Court of Appeal authority. As for count no.3, I tend to agree with the learned Magistrate. The summary of facts presented by the prosecution was poorly prepared. It is of fundamental importance that summary of facts in every criminal case must be prepared properly, with the proper use of the English language.
7. Given the above, and pursuant to section 262(1) of the Criminal Procedure Decree 2009, I make the following orders and directions:
 - (i) The two accuseds' convictions and sentences in the Suva Magistrate Court on 29th June, 2012 are quashed and set aside;
 - (ii) Since count no. 1 in the charge is a category 4 drug offence, as decided in **Kini Sulua, Michael Ashley Chandra v The State** (supra), count no. 1 to 4 are to be transferred to the Suva High Court for trial;

- (iii) This case is remitted to the Suva Magistrate Court, before the Chief Magistrate or his nominee's court, for the orders mentioned in paragraph 7(ii) above to be formally made;
- (iv) Case is adjourned to the Suva Magistrate Court for mention on 26th April 2013, at 9.30 am;
- (v) The case is to be transferred to the Suva High Court not later than 10th May, 2013 at 9.30 am;
- (vi) Both accuseds are remanded in custody pending their appearance in the Suva High Court.

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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecutions, Suva**
Solicitor for Accused : **Accused in Person**