

IN THE HIGH COURT OF FIJI

AT SUVA

REVISIONAL JURISDICTION

CRIMINAL REVIEW CASE NO. HAR 016 OF 2012S

STATE

VS

ISIRELI VEIMOSOI

Counsels : **Mr. L. Fotofili for the State**
Accused in Person
Hearing : **15th March, 2013**
Judgment : **02nd May, 2013**

JUDGMENT

1. On 30th March, 2012, the accused appeared in the Suva Magistrates Court, on the following charge:

Statement of Offence

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

Particulars of Offence

ISIRELI VEIMOSOI, on the 21st day of February, 2012, at Nasaca Farm, Navuatu Village, Sanima, Kadavu, in the Eastern Division without lawful authority, cultivated 58 Marijuana plants weighing 1540.1 grams of Indian Hemp botanically known as Cannabis Sativa, an Illicit Drug.

2. On 29th March, 2012, the accused waived his right to counsel. On 30th March, 2012, the charge was read to him in the "i-taukei" language. He said, he understood the same, and he pleaded guilty to the charge. The summary of facts was presented. It said, the accused, on 21st February 2012, at a farm in Kadavu, without lawful authority, cultivated 58 plants of Indian hemp weighing 1,540.1 grams of cannabis sativa, an illicit drug. He agreed with the summary of facts. He was found guilty as charged and convicted accordingly.
3. The court relied on the authority of Meli Bavesi vs The State, Criminal Appeal No. HAA 027 of 2004, High Court, Suva. It identified the tariff as a sentence between 2 to 4 years imprisonment. It started with 3 years imprisonment. It increased the same by 2 years to 5 years imprisonment, for the aggravating factors ie. its menace to society. For the mitigating factors (ie. 1st offender, guilty plea, remorseful, remanded in custody), the 5 years was reduced by 3 years 1 month, leaving a final sentencing of 1 year 11 months, with a non-parole period of 15 months, from 30th March 2012.
4. On 31st May, 2012, the Fiji Court of Appeal delivered a guideline judgment on drug sentencing in Fiji, in Kini Sulua, Michael Ashley Chandra, v The State. Criminal Appeal Nos. AAU 0093 of 2008 and AAU 0074 of 2008. Subject to the decision of the Supreme Court of Fiji, the Fiji Court of Appeal, laid down a guideline on sentencing on those involved in drug offending as follows:
 - (i) **Category 1:** possession of 0 – 100 grams of cannabis sativa – a non-custodial sentence to be given, for example, fines, community service, counseling, discharge with a strong warning, etc. Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.

- (ii) **Category 2:** possession of 100 to 1,000 grams of cannabis sativa. Tariff should be a sentence between 1 to 3 years imprisonment, with those possessing below 500 grams, being sentenced to less than 2 years, and those possessing more than 500 grams, be sentenced to more than 2 years imprisonment.
- (iii) **Category 3:** possessing 1,000 to 4,000 grams of cannabis sativa. Tariffs should be a sentence between 3 to 7 years, with those possessing less than 2,500 grams, be sentenced to less than 4 years imprisonment, and those possessing more than, 2,500 grams, be sentenced to more than 4 years.
- (iv) **Category 4:** possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment.

5. This case involved the cultivation of illicit drugs weighing 1,540.1 gram of Indian hemp. It is therefore a category 3 offence, with a tariff of 3 – 7 years imprisonment. I agree with the Magistrate Court's starting sentence of 3 years imprisonment. I also agree with the Magistrate Courts increase of 2 years to 5 years imprisonment for the aggravating factors. However, I disagree with the total reduction of 3 years 1 month for the mitigating factors. In my view, the total decrease for the mitigating factors should not exceed 2 years. Thus, decreasing the total 5 years by 2 years for the mitigating factors, is just, given the facts of this case. The final sentence should therefore be a sentence of 3 years imprisonment, from 30th March, 2012.

6. Pursuant to section 262(1)(a) of the Criminal Procedure Decree 2009, I make the following orders and directions:

- (i) The Suva Magistrate Court's 30th March 2012 sentence of 1 year 11 months, with a non parole period of 15 months, is quashed and set aside;

- (ii) In substitution thereof, the accused is sentenced to 3 years imprisonment from 30th March 2012, but since he's been in custody since then, that is, 1 year 1 month ago; 1 year 1 month is deducted from 3 years, leaving a balance of 1 year 11 months;
- (iii) Because of (ii) above, the accused is only to serve 1 year 11 months, effective forthwith.

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JUDGE

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