

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 051 OF 2013S

STATE

vs

NEMANI RATUYAWA

Counsels : Mr. T. Qalinauci for State
Mr. M. Fesaitu for Accused
Hearing : 13 June, 2014
Sentence : 16 June, 2014

SENTENCE

1. On 13 June 2014, the accused, with another co-accused, appeared in the High Court, on the following information:

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: *Contrary to section 5(a) of the Illicit Drugs Control Act 2004.*

Particulars of Offence

NEMANI RATUYAWA and **PAULA NAWADRADRA** on the 25th day of January 2012 at Nukulekaleka farm, Naikorokoro, Kadavu in the Eastern Division, without lawful authority, cultivated 221 plants of *cannabis sativa*, an illicit drug, weighing a total of 69.5 kilograms.

2. Both the accused, and his co-accused, were represented by counsels. The information was read and explained to both of them, and both said they understood the same. The accused pleaded guilty, while his co-accused pleaded not guilty. His co-accused's case had been adjourned to 30 June 2014 for trial. The accused's case proceeded to the prosecution reading the summary of facts to the court.
3. Briefly, the summary of facts were as follows. On 25 January 2012, the Kadavu Police Station received information that some youths were cultivating illicit drugs at Nukulekaleka farm, in Naikorokoro, Kadavu. At about 6am on the day, three police officers conducted a boat patrol at Vunisea jetty. The police officers arrested the accused, and took him to Naikorokoro Village. At a nearby farm, the accused pointed out to police the marijuana plants he and another, were planting and cultivating. He said, the plants were theirs. The police uprooted the plants (221 plants) and took the same to Kadavu Police Station. From Kadavu, it was later taken to the Koronivia Research Station to be weighed and analyzed. The government analyst confirmed the plants were Indian hemp botanically identified as cannabis sativa, and it had a total weight of 69.5 kg. The accused was later charged for unlawfully cultivating illicit drug plants.
4. The court checked with defence counsel to see whether or not the accused had admitted the elements of the offence. The accused, through his counsel, admitted the particulars of the information. In other words, the accused admitted that on 25 January 2012, at Nukulekaleka farm, at Kadavu, he and another, without lawful authority, cultivated 221 plants of cannabis sativa, an illicit drug, which weighed a total of 69.5kilograms. On the basis of the above admission, the court found the accused guilty as charged, and convicted him accordingly.
5. The court noted that, prior to 25 January 2012, the accused was a first offender. He made his plea in mitigation through his counsel. He is 25 years old. He is remorseful and is asking for leniency. He wants to go overseas, and is asking for a second chance.
6. Section 5(a) of the Illicit Drugs Control Act 2004, reads as follows:

“...5. Any person who without lawful authority –

 - a) *acquires, supplies, possesses, produces, manufactures, cultivates, uses or administers an illicit drug... commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for life or both...”*

7. The majority judgment in **Kini Sulua, Michael Ashley Chandra v The State**, Criminal Appeal No. AAU 0093 of 2008 and AAU 0074 of 2008, Fiji Court of Appeal, Suva, is now the sentencing guideline on offending against section 5(a) of the Illicit Drugs Control Act 2004. Sentencing is dependent on the weight of the Illicit drug involved, and it is now classified into four categories:

“...**(i) category 1:** *possession of 0 to 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.*

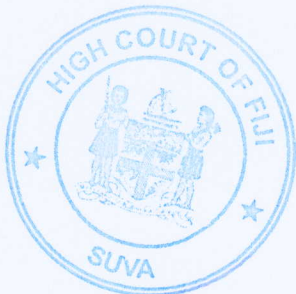
(ii) category 2: *possession of 100 to 1,000 gram of cannabis sativa. Tariff should be a sentence between 1 to 3 years imprisonment, with those possessing below 500 grams, being sentenced to less than 2 years, and those possessing more than 500 grams, be sentenced to more than 2 years imprisonment.*

(iii) category 3: *possessing 1,000 to 4,000 grams of cannabis sativa. Tariff 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...”*

8. Note that the above four categories apply to “possession” offences only, but in paragraph 117 of it’s judgment, the Court of Appeal in the above case, has extended the above categories to including all the offending “verbs” in section 5(a) of the Illicit Drugs Control Act 2004, that is, it also covers offending such as “cultivation”. The tariff therefore in this case is a sentence between 7 to 14 years imprisonment. The illicit drug in this case, involved 69.5 kilogram. So far, to my knowledge, this is the biggest marijuana case that has ever reached the High Court, as far as the weight of the illicit drug was concerned. This is so, despite the numerous uprooting of majiruana plants by the police in various parts of Fiji, that the public witnesses on Television and newspapers, every now and then. Nevertheless, the final sentence will depend on the mitigating and aggravating factors.

9. In this case, the aggravating factors, are as follows:
- (i) Quantity of Illicit Drug Involved. In this case, the police uprooted 221 plants, which weighed a total of 69.5 kilograms of cannabis sativa. This is the “biggest” amount of cannabis sativa case to come before the High Court.
 - (ii) It is well accepted that the use of marijuana in our community had brought about nothing but miseries to a lot of families.
10. The mitigating factors were:
- (i) At the age of 25 years, this is the accused's first offence;
 - (ii) During the police investigation, the accused co-operated with police;
 - (iii) He pleaded guilty to the offence, although this was 1 year 4 months 5 days after the case was first called in the High Court on 8 February 2013.
11. I start with a sentence of 13 years imprisonment. I add 4 years for the aggravating factors, making a total of 17 years imprisonment. For the mitigating factors, I deduct 2 years, leaving a balance of 15 years imprisonment.
12. Nemani Ratuyawa, for cultivating 69.5 kilogram of cannabis sativa plants, I sentence you to 15 years imprisonment, with a non-parole period of 14 years imprisonment. This sentence is concurrent to any prison sentence you are now serving.
13. Before I leave this case, the above sentence is a warning to all those who are cultivating cannabis sativa plants throughout Fiji. Part of the reason why the Illicit Drugs Control Act 2004 was passed was to combat and discourage youths from planting marijuana plants near “i-taukei” villages. If you are caught planting cannabis sativa plants, do not expect any mercy from the courts.




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JUDGE

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