

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 333 of 2016

BETWEEN: STATE PROSECUTION

AND: SENIVALATI KOLI ACCUSED PERSON

Counsel: Ms. Kumar D. for State
Mr P. Tawake for Accused

Sentence: 09th November 2016

S E N T E N C E

1. Senivalati Koli you were charged in the Magistrate's Court, Suva for 1 count of Unlawful Cultivation of Illicit Drugs and 1 count of Possession of Illicit Drugs.

2. The charges were as follows:

Count one

Statement of Offence

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

Particulars of Offence

SENIVALATI KOLI, between the months of October 2015 to the 27th day of January 2016, at Tamavua in the Central Division, unlawfully cultivated 103 plants weighing at 18.2 kilograms of Cannabis Sativa known as an Illicit Drugs.

Count two*Statement of Offence*

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

Particulars of Offence

SENIVALATI KOLI, on the 27th day of July 2016, at Tamavua in the Central Division, was in possession of 100 grams of Cannabis Sativa known as an Illicit Drugs.

3. You pleaded guilty to both counts in the Magistrate's Court and the learned Magistrate after recording the conviction forwarded the case to the High Court for sentencing.
4. The summary of facts as admitted by you in the Magistrate's Court is:

Count One: Unlawful Cultivation: On the 27th of January 2016 at about 9.00am at the roundabout at Vunilekutu in Tamavua. Police Constable Bole [PW-1] 34 years of Dog Unit and Inspector Low [PW-2] 45 years of Dog Unit was on track finding in the bushes of Tamavua when they came across a 70 plants planted to the soil and 33 plants kept in farm plastic which they believed to be marijuana.

[PW-1] was tracking in the farm when he saw **SENIVALATI KOLI** [accused] 47 years, farmer of Tamavua village walking to the farm.

The [accused] saw [PW-1] and ran to the compound of Latter Day Saints School whereby [PW-1] arrested the [accused] hiding in nearby bushes.

The [accused] was brought to the farm and admitted that he planted the plants.

The plants were uprooted and taken to be analysed.

Count two: Possession of Illicit Drugs: On the 27th of January 2016 at about 11.00am at Tamavua Village, Sergeant Tomasi Tukana [PW-1] 42 years of Samabula Police Station and team took **SENIVALATI KOLI** [Accused] 47 years, farmer of Tamavua Village to his house to search where they found a pink plastic bag containing dried leaves, 32 samples of dried leaves wrapped in aluminium foils and container containing seeds inside the house of the [Accused].

The 70 fresh plants and dried leaves with seeds were taken to be analysed at the forensic department.

The [accused] was interviewed under caution whereby he admitted planting the plants, [Please refer to Q & A number: 59]

Reconstruction of the scene was conducted in the presence of the [accused] where he showed the location of his farm.

The [accused] is charged for 2 counts for: **UNLAWFUL CULTIVATION OF ILLICIT DRUGS:** Contrary to Section 5 (a) of the Illicit Drugs Act of 2004 and **POSSESSION OF ILLICIT DRUGS:** Contrary to Section 5 (a) of the Illicit Drugs Act of 2004.

The [accused] is appearing in custody on 29/01/16.

5. Punishment prescribed for Unlawful Cultivation of Illicit Drugs in terms of section 5 (a) of the Illicit Drugs Control Act 2004 is a fine not exceeding \$1000000 or imprisonment for life or both.

6. Tariff for the offence was set in case of Sulua v. State (2012) FJCA 33; AAU0093.2008 [31 May 2012] and the following categories were prescribed.
- (i) **Category 1:** possession of 0 to 100 grams of cannabis sativa – a non-custodial sentence to be given, for example, fines, community service, counselling, 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 possession below 500 grams, being sentenced to less than 2 years, and those possession 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.
7. The Illicit Drugs Control Act 2004 prescribes same punishment for cultivation as well as possession of illicit drugs.
8. Offence in count no. 1 falls under category 4 above and count no. 2 falls under category 1, on the weight of the drugs involved.

9. For count no. 1 the sentence range shall be 7 – 14 years as the weight of the drugs involved is 18.2 kilograms.
10. I take 12 years as the starting point.

Aggravating factors

11. I find no aggravating factors other than the weight of the drugs involved. However, the starting point was picked taking into account the tariff on category 4 and therefore no further period should be added to the starting point on the weight of the drugs.

Mitigating factors

12. Although you have a previous conviction for Drunk and Disorderly behaviour in June 2006, I disregard that as it is more than 10 years old. Therefore I consider you as person of previous good behaviour. You pleaded guilty to the charges at your earliest opportunity. Your personal circumstances as mentioned by your counsel are also taken into consideration.
13. I deduct 2 years for your mitigating factors. I further deduct 3 years for your early guilty plea. Now your sentence for count no. 1 is 7 years imprisonment.

14. On count no. 2, taking into account the above mitigating factors I sentence you to 6 months imprisonment.
15. Both sentences in counts 1 and 2 are to run concurrently. Your non-parole period will be 6 years.
16. For this case you have been in remand custody for about 1 month. I deduct another 1 month taking into account your period in remand considering that you have already served that 1 month.
17. Therefore the sentence you have to serve is:
Count No. 1: 6 years and 11 months imprisonment.
Count No. 2: 6 months imprisonment.

Both sentences to run concurrently. Your non-parole period will be 5 years and 11 months.



At Suva

09th November 2016

Priyantha Fernando
Judge

Solicitors

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for Accused