

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 50 of 2015

BETWEEN:

STATE

PROSECUTION

AND:

ANARE BAI

ACCUSED PERSON

Counsel:

Ms. K. Semisi for State  
Mr P. Tawake for Accused

Sentence:

20<sup>th</sup> May 2016

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**S E N T E N C E**

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1. Anare Bai, you pleaded guilty to the following offence.

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

ANARE BAI on the 18<sup>th</sup> day of January 2015, at Rakiraki  
Village, Kadavu in the Southern Division, without lawful  
authority cultivated approximately 227 plants of cannabis  
sativa an illicit drug, weighing approximately 20.3  
kilograms.

2. You admitted the summary of facts as submitted by the State. The court found that your plea of guilty for the offence was unequivocal and you were convicted for the same.
3. The summary of facts as submitted by State and admitted by you are:

On the 18<sup>th</sup> January 2015 at about 8am at Rakiraki Village in Kadavu, Sakeo Ganivatu, 45 years old, Police Officer of Valelevu Police Station conducted a raid with his police team under an operation called 'Sasamaki' and uprooted 227 Indian Hemp plants from the farm belonging to Anare Bai, 55 years old farmer of Rakiraki Village, Yale, in Kadavu. The accused, Anare Bai went with this police team to his first farm known as 'Naua Farm', where 21 marijuana plants were uprooted by police. The accused, Anare Bai then went with the police team to his second farm namely, 'Wailevu Farm' where 205 marijuana plants were uprooted and escorted by police to the Kadavu Police Station. These plants were tested by the Fiji Police Forensics Officer, Ms. Werebauinona, who confirmed the plants to be cannabis sativa with a total weight of 20.3kg and with a height range of 27cm – 175cm. The plants were brought from the Kadavu Police Station and kept at the Nabua Police Station.

The accused was arrested on the 18<sup>th</sup> day of January 2015 and caution interviewed on the same day wherein he made admissions in his caution interview that he had planted the marijuana plants and took the police team to both his farms.

The accused was later charged with one count of Unlawful Cultivation of Illicit Drugs, contrary to section 5 (a) of the Illicit Drugs Control Act 2004.

4. The cultivation of illicit drugs in Fiji carries a maximum penalty of a fine not exceeding \$1,000,000 or imprisonment for life or both (Section 5 (a) of the Illicit Drugs Control Act 2004).
5. In terms of Section 5 (a) of the Illicit Drugs Control Act 2004, same punishment is prescribed for acquiring, supplying, possessing, producing, manufacturing, cultivating, and using or administering of illicit drugs.
6. In *Kini Sulua, Michael Ashley Chandra v. The State, Criminal Appeal No. AAU 0093 and AAU 0074 of 2008* after considering 50 cases of illicit drug offending in Fiji, Court of Appeal laid down the following sentencing guidelines.

“...(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 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..."

7. The above categories were decided on the weight of the illicit drugs involved. As the weight of the drugs involved in this case is 20.3kg, this falls under category 4 above and therefore the tariff is 7 – 16 years imprisonment.

8. In **State v. Vulaloa** [2016] FJHC 98; HAC 003.2015LAB (27 January 2016), where the accused was found guilty for cultivating 94 plants of cannabis sativa weighing 41kg was sentenced to 13 years imprisonment with a non-parole period of 12 years.
9. In case of **State v. Tawake** [2016] FJHC 215; HAC 061.2016S (1 April 2016) where the accused pleaded guilty for cultivating cannabis sativa weighing 84.6 kg was sentenced to 13 years imprisonment with a non-parole period of 12 years.
10. In case of **State v. Joseva Vonokula, Iliavi Sauledeci** where the accused persons pleaded guilty for cultivating cannabis sativa weighing 119.2kg were sentenced to 10 years imprisonment with a non-parole period of 8 years.
11. I take into consideration the above line of sentencing and the tariff set in *Kini Sulua* (supra) case. The quantity of the drugs involved in this case is 20kg.
12. I take 11 years as the starting point. The quantity of drugs was taken into consideration when deciding on the category and the tariff.
13. The mitigating factors are that you are a first offender and you cooperated with the police in their investigation. Your personal background submitted is also taken into consideration. I deduct 1 year for the above mitigating factors.

14. You pleaded guilty on the date that the case was fixed for trial. Although it was not at the earliest opportunity I further deduct 2 years for your guilty plea.
15. Now your sentence is 8 years imprisonment. Your non-parole period will be 7 years.
16. You have been in remand for the case for 1 year and 4 months. Therefore I deduct further 1 year and 4 months from your sentence and now your final sentence is 6 years and 8 months. Your non-parole period will be 5 years and 8 months.
17. Your final sentence you have to serve is 6 years and 8 months with a non-parole period of 5 years and 8 months.



  
**Priyantha Fernando**  
Judge

**At Suva**

20<sup>th</sup> May 2016

**Solicitors**

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