

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 02 OF 2018

BETWEEN: **THE STATE**

AND: **VOSAMANA SALEVUWAI**

Counsel: **Mr R Kumar for the State**
 Ms C Choy for the Accused (Duty Solicitor)

Date of Hearing: **16 January 2018**

Date of Judgment and Sentence: **19 January 2018**

JUDGMENT AND SENTENCE

[1] Vosamana Salevuwai, on 16th January 2018, you appeared before this Court and pleaded guilty to a charge of an unlawful cultivation of an illicit drug contrary to section 5 (a) of the Illicit Drugs Control Act 2004. Before I accept your plea of guilty, I have to be satisfied that your guilty plea is a genuine expression of guilt and is also informed. You spoke to counsel from the Legal Aid Commission before you entered your plea of guilty.

[2] When you entered your plea of guilty you advised the Court that you were pleading guilty freely, voluntarily, without inducement or mistake. You were informed of your trial rights and you were waiving them. After hearing you and your counsel and the facts tendered by the prosecution in support of the charge, I am satisfied that your plea of guilty is a genuine expression of guilt and is valid. I accept your plea of guilty and convict you accordingly of the charge. I now pronounce sentence upon you.

- [3] I base your sentence upon the following facts. On 22nd December 2017, the police officers from Vanua Levu carried out a raid at your farm at Buca, Natewa, Cakaudrove. When the police officers arrived at your home, you led them to your farm where you have been growing Cannabis Sativa, commonly known as marijuana. The police officers seized 8 plants which had already been uprooted and left at the farm to dry. The officers also uprooted 9 grown up plants and seized them. All seized plants were sent to a senior government analyst for a test.
- [4] On 23rd December 2017, the plants were tested in a government lab. The heights of the plants were recorded in the report to be from 82 cm to 290 cm. The plants were weighed. The total weight of the plants was 12 kg. Result from the test was positive. The plants were Indian Hemp botanically known as Cannabis Sativa. In your caution interview, you admitted cultivating the illicit plants to earn money (Q & A 33).
- [5] The seriousness of the offence is reflected in the maximum penalty prescribed for it. It is life imprisonment. Cultivation of an illicit drug for commercial purpose is a serious offence. The marijuana plants that were seized from your farm were mature plants, ready for the drug market. They were not for personal use. You admitted you grew the plants for sale. Deterrence, both special and general, is the primary purpose of sentence that applies in your case.
- [6] I am further guided by the majority decision of the Court of Appeal in *Sulua v State* [2012] FJCA 33; AAU0093.2008 (31 May 2012) that recommends a tariff of 7 to 14 years imprisonment for unlawful possession of more than 4 kg of Cannabis Sativa. But I am careful in determining your culpability solely on the weight of the illicit plants. Weight of Cannabis Sativa plants can be affected by whether the plants are in green or dried state and whether the stems and roots were detached before the weight was determined. In the case of cultivation, it is not the weight but the number of plants and maturity of the plants that are relevant.
- [7] In your case, you grew a total of 17 marijuana plants, 8 were already matured and being dried for sale. The prosecution has not led any evidence of the street value of the drugs seized from your farm. I am mindful that you are not involved in a large scale commercial farming of marijuana. You are a small scale farmer, who has fallen

prey to the temptation to earn quick and easy money by those you are engaged in this lucrative drug business. They are the real perpetrators, who exploit vulnerable and unsophisticated farmers like you, in pursuit of their criminal enterprise.

- [8] The most compelling mitigating factor is your early guilty plea. Your cooperation with the police in disclosing the location of your farm and your admission of the offence and your early guilty plea indicate that you are genuinely remorseful for your conduct. For that I discount your sentence by one-third.
- [9] You are 40 years old and married with three young children. Your family is dependent on you for their livelihood. However in drug cases, personal circumstances of the offender carry little value in sentencing. You have no previous convictions and I consider you to be a person of previous good character. I give you discount for your good character.
- [10] You have been in custody on remand since you were arrested on 22 December 2017. I give you a discount for your remand period.
- [11] Taking all these factors into account I sentence you to 3 years' imprisonment with a non-parole period of 2 years for unlawfully cultivating 17 Cannabis Sativa plants.
- [12] Drugs seized are to be handed to the High Court Registry to be photographed and destroyed after the expiry of the appeal period.



A handwritten signature in blue ink, appearing to read "Daniel Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

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