

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 360 OF 2016S

STATE

Vs

ALIFERETI RATOKABULA

Counsels : Mr. E. Samisoni and Ms. S. Lodhia for State
Ms. V. Filipe and Ms. L. Manulevu for Accused

Hearing : 1, 2, 5, 6 and 7 March, February, 2018

Summing Up : 8 March, 2018

Judgment : 8 March, 2018

Sentence : 9 March, 2018

SENTENCE

1. In a judgment delivered yesterday, the court found you guilty and convicted you on the following information:

Count

Statement of Offence

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

Particulars of Offence

ALIFERETI RATOKABULA *on the 26th of September 2016, at Naqara Village, Ono, Kadavu in the Southern Division, without lawful authority cultivated 170 plants of Cannabis Sativa, an Illicit Drug, weighing 21.95 kilograms.*

2. The brief facts were as follows. On 26 September 2016, you were 24 years old. You were married with a young daughter. You lived in Naqara Village, Ono, Kadavu with your family and

father. You were a subsistence farmer and planted yaqona, dalo and cassava for a living. Prior to 26 September 2016, the police received information that you were cultivating marijuana. On 26 September 2016, after 7.15 am, the police raided your farm and uprooted 170 marijuana plants.

3. You were spotted by police returning from the farm after watering your marijuana plants. With the help of the Village Headman, they located your house and upon questioning, admitted the marijuana plants were yours. The 170 marijuana plants and you were later taken to Kadavu Police Station. At Kadavu Police Station, you were caution interviewed by police. You admitted the 170 marijuana plants were yours. The plants were analysed by the government analyst, and she confirmed the same were cannabis sativa plants, an illicit drug. The plants weighed a total of 21.95 kilograms.
4. The maximum sentence for "Unlawful Cultivation of cannabis sativa plants, an illicit drug", is a fine of \$1,000,000 or life imprisonment or both (section 5 (a) of the Illicit Drugs Control Act 2004). Society, through Parliament, viewed the offence seriously. In **Kini Sulua, Michael Ashley Chandra v State** [2012] Fiji Law Reports, Volume 2, page 111, at paragraph 115 on page 143, the majority in the Court of Appeal laid down the following sentence guideline:
 - (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 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.

5. Although the above sentence guidelines apply to possession of cannabis sativa drugs, they also apply to unlawful cultivation of cannabis sativa plants. Please, refer to paragraph 116 and 117 of **Kini Sulua, Michael Ashley Chandra v State** (supra) in pages 143 and 144. The weight of the drugs in this case being 21.95 kilograms, it makes the case a Category 4 case. The tariff is therefore a sentence between 7 to 14 years imprisonment. However, the final sentence will depend on the aggravating and mitigating factors.
6. In this case, the aggravating factor, was as follows:
 - (i) The amount of illicit drugs that you cultivated were huge, that is, it weighed 21.95 kilogram. This was about four times the amount of drugs found on Kini Sulua in the case mentioned above. Kini Sulua got a sentence of 8 years imprisonment for possessing 5.2 kilograms of cannabis sativa.
7. The mitigating factors were as follows:
 - (i) At the age of 24 years old, this was your first offence;
 - (ii) You had been remanded in custody since 26 September 2016, that is, approximately 1 year 5 months 10 days ago.
8. I start with a sentence of 12 years imprisonment. I add 3 years for the aggravating factors, making a total of 15 years imprisonment. I deduct 1 year 6 months for time already served while remanded in custody, leaving a balance of 13 years 6 months. For being a first offender, I deduct 1 year 6 months, leaving a balance of 12 years imprisonment.
9. Mr Alifereti Ratokabula, for unlawfully cultivating 21.95 kilograms of cannabis sativa in your farm at Naqara, Ono, Kadavu on 26 September 2016, I sentence you to 12 years imprisonment, with a non-parole period of 11 years imprisonment, effective forthwith.
10. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances, to protect the community from people like you, to deter other would-be offenders and to signify that the court and the community denounce the commission of such offence.
11. The drugs are to be destroyed by the Chief Registrar's Office, with the assistance of the police, at the end of the appeal period, or as ordered by the Court of Appeal.

12. You have 30 days to appeal to the Court of Appeal.



Salesi Temo
JUDGE

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