

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 140 of 2018

STATE

V

ORISI TOBUA

Counsel : Ms. S.N.Navia for the State.
: Ms. J. Singh [LAC] for the Accused.

Date of Sentence : 19 February, 2019

SENTENCE

1. The accused is charged with the following information filed by the Director of Public Prosecutions dated 27th August, 2018:

Statement of Offence

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

Particulars of Offence

ORISI TOBUA between the 1st day of November, 2016 and the 31st day of March, 2017 at Navosa in the Western Division without lawful authority, cultivated 46 plants of Cannabis Sativa, an illicit drug, weighing 8kg.

2. On 8th October, 2018 the accused who was represented by counsel pleaded guilty in this court to the above count. After the summary of facts was read to the accused he admitted the same after understanding the contents read out.

SUMMARY OF FACTS

3. The summary of facts admitted by the accused is reproduced herewith:

“On 5/3/17, a team of police officers led by Sergeant 2873 Taivei Turaganivalu (hereinafter “PW1”) were deployed for “Operation Cavouraka” at the Navosa Highlands. They were based at the Navosa Police Station. On 20/3/17, PW1 was tasked by DC Masitabua who was the ground commander to lead a raid team consisting of SC 2959 Anasa Kovea, SC 4439 Saiyasi Talemaitoga, SC Elo Maretino, SC 2965 Inoke Tavuyara and SC 1441 Maikeli Vereimi to conduct a drug raid on the highlands of Yauyau in Navosa.

The accused, Orisi Tobua (hereinafter “the accused”) accompanied the team. They went through Nasivikoso Road, Bukuya, Nanoko Road and arrived at their drop-off zone at Malua Highlands. They reached their drop-off zone at 6.50am. From there, they walked to the farmland at Yauyau. They reached the targeted farm at 10.00am.

When they arrived at the farm, they found 46 cannabis sativa plants being planted on the farm. The farm was situated on a slope beside a small creek.

While securing the farm, PW1 asked the accused as to whom does the marijuana farm belong to, the accused told PW1 that it belonged to him and that he planted the cannabis sativa alone. The team then uprooted the 46 marijuana plants. PW1 informed the accused that he is under

arrest for unlawful possession of illicit drugs and advised him of his rights. They left Yauyau at 2.00pm together with the 46 marijuana plants. They arrived at Navosa Police Station at 6.58pm where PW1 handed the 46 cannabis sativa plants to PC 4880 Saula Kunavatu who was the Crime Writer at Navosa Police Station.

The cannabis sativa plants were later taken for analysis. The government analyst confirmed that the plants were cannabis sativa and weighed 8 kilograms.

The accused was caution interviewed where he admitted that he has been planting cannabis sativa. The accused was subsequently charged.

4. The caution interview of the accused in the Itaukei language and its English translation were marked and tendered as prosecution exhibit nos. 1 and 1(a) respectively.
5. This court also takes cognisance of the analyst report dated 22nd March, 2017 which was exhibited in the Magistrate's Court as prosecution exhibit no. 2.
6. After considering the summary of facts read by the State Counsel and upon reading the caution interview of the accused and the analyst report this court is satisfied that the accused has entered an unequivocal plea of guilty on his own free will. This court is also satisfied that the accused has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted by the accused satisfies all the elements of the offence.
7. In view of the above, this court finds the accused guilty as charged and he is convicted accordingly.

8. Both counsel filed written sentencing submissions for which this court is grateful.

PERSONAL DETAILS AND MITIGATION OF THE ACCUSED

9. The learned counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused is 38 years of age but was 35 years at the time he committed the offence;
 - b) A Farmer;
 - c) The accused is not married;
 - d) Pleaded guilty at the earliest opportunity;
 - e) Is a first offender;
 - f) Has cooperated with the police during investigations;
 - g) Looks after his sickly mother;
 - h) He is remorseful for his actions;
 - i) Knows what he did was wrong;
 - j) Seeks forgiveness of the court.
10. The maximum punishment for unlawful cultivation of illicit drugs under section 5 (a) of the Illicit Drugs Control Act 2004 is a fine not exceeding \$1,000,000.00 or imprisonment for life or both.
11. The Court of Appeal in *Kini Sulua and Michael Ashley Chandra vs. The State, Criminal Appeal No. AAU 0093 of 2008 and AAU 0074 of 2008 (31 May, 2012)* by majority decision formulated the following sentencing guidelines for offences committed under sections 5 (a) and 5 (b) of the Illicit Drugs Control Act:

“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.

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.

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.

Category 4: possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment”.

12. It is apparent from the *Kini Sulua* case that the quantity of the illicit drugs will determine the tariff applicable to a particular case although it was a case of possession of cannabis sativa. In this case the weight of the cannabis cultivated by the accused is 8kg which comes within category 4 of *Kini Sulua*'s case.
13. The applicable sentencing tariff in this case is a sentence between 7 and 14 years imprisonment.

AGGRAVATING FACTORS

14. The number of cannabis sativa plants (46) which were uprooted suggests that the accused was engaged in a commercial supply of the drugs for the purpose of earning a living. In the caution interview the accused admitted this as well.

REMAND PERIOD

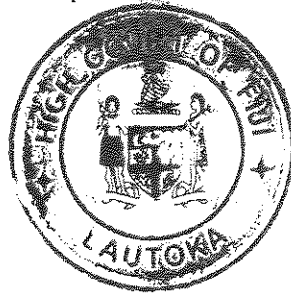
15. The accused has spent about 7 ½ months in remand.
16. I do take into consideration that the accused has pleaded guilty at the earliest opportunity and I did notice some remorse shown by the accused when he appeared in court, however, this remorse has to be weighed with the serious nature of the offence committed. I also accept the accused is a person of good character being a first offender.
17. Bearing in mind the objective seriousness of the offence committed I select a middle range of the tariff starting point of 10 years imprisonment. For the aggravating factor I add 4 years bringing the interim total to 14 years imprisonment.
18. I reduce the sentence for the mitigating factors and good character by 1 year arriving at 13 years imprisonment. For the early guilty plea which in my view was motivated by some remorse I further reduce this sentence by 1 year. Although the accused has entered an early guilty plea this court is of the view that after weighing the seriousness and the circumstances of the offending a one third discount is not warranted (see *Gordon Aitcheson vs. The State, criminal petition no. CAV0012 of 2018 (2 November, 2018)*).
19. The sentence of the accused is now 12 years imprisonment. For the remand period I further reduce the sentence by 7 ½ months. The final sentence is now 11 years and 4 ½ months imprisonment.
20. Cannabis sativa commonly known as marijuana is an addictive illicit drug which has many adverse effects both socially and personally. The punishment prescribed under the Illicit Drugs Control Act 2004 reflects the serious consideration given by the law makers towards the prevention of the cultivation of such drugs.

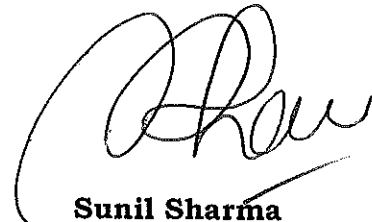
21. The law makers had viewed cultivation of illicit drugs as a very serious offence which is reflected in the punishment. The accused in his greed to make money by illegal means should be prepared to face the full brunt of the law. The society is sick and tired of drugs cases rearing its ugly face every now and then this must stop sooner rather than later. It is for the court to impose sentences which has general and specific deterrence factor to give a warning to all those out there that any breach of the law relating to drugs will not be tolerated and no leniency will be shown to the offenders.
22. Instead of putting his labour in such an illegal cultivation the accused should have directed his efforts towards something lawful for which he would have received praise from his peers and villagers but that was not to be. An immediate long term custodial sentence is inevitable.
23. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed I am compelled to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
24. Under section 18 (1) of the Sentencing and Penalties Act, I impose 9 years imprisonment as a non-parole period to be served before the accused is eligible for parole. It is obvious that the accused takes responsibility of his action, has cooperated with the police during the pre-charging and by admitting his unlawful action in court suggests that he is genuinely interested in reforming himself. I therefore consider this non-parole period to be appropriate in the rehabilitation of the accused.

CONCLUSION

- 25. The accused is sentenced to 11 years and 4 ½ months imprisonment with a non-parole period of 9 years imprisonment with immediate effect.

- 26. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka
19 February, 2019

Solicitors

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