

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 324 OF 2018S**

**STATE**

**vs**

**INOKE SIVA**

**Counsels : Mr. E. Samisoni for State  
Ms. T. Kean and Ms. M. Cobona for Accused**

**Hearings : 2, 3, 4 and 5 March, 2020.**

**Summing Up: 6 March, 2020.**

**Judgment : 6 March, 2020.**

**Sentence : 9 March, 2020.**

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**SENTENCE**

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1. In a judgment delivered on 6 March 2020, the court found you guilty and convicted you on the following information:

***“Statement of Offence***

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

*Particulars of Offence*

*INOKE SIVA on the 20<sup>th</sup> day of July, 2018 at Suva in the Central Division, without lawful authority, was found in possession of an illicit drug namely cannabis sativa, weighing 15 kilograms.”*

2. The brief facts were as follows. On 20<sup>th</sup> July 2018, you travelled with others from Nakasaleka Kadavau to Muanikau Suva. The trip by fiber glass boat took you two hours. You brought to Suva a white and red stripe bag with 15 kilograms of cannabis sativa plant materials contained therein, to sell in Suva. This was obviously to supplement your income as a subsistence farmer. You are married with 6 children, aged between 24 to 13 years old, to support. The police in Suva were forewarned about your activities, and on arrival in Suva, you were arrested and the illicit drugs you brought were discovered. You were later charged for unlawful possession of illicit drugs. You had been convicted after trial in the High Court.
  
3. The maximum sentence for “Unlawful Possession of cannabis sativa, 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.

- 4. The weight of the drugs in this case being 15 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.
- 5. In this case, there appears to be only one aggravating factor, that is, the drugs found on you were huge.
- 6. The mitigating factors were as follows:
  - (i) At the age of 49 years, this is your first offence;
  - (ii) The accused was remanded in custody, awaiting trial and sentence, for approximately 1 year 3 months;
  - (iii) Although the accused exercised his rights to defend himself in court, he nevertheless co-operated with police by admitting the offence when cautioned interviewed by police, and showed the police where he hid the bag of marijuana in the Muanikau mangrove.

7. I start with a sentence of 8 years imprisonment. I add 2 years for the aggravating factor, making a total of 10 years imprisonment. I deduct 1 year 3 months for time already served, while remanded in custody, leaving a balance of 8 years 9 months. For being a first offender, I deduct another 9 months, leaving a balance of 8 years imprisonment. For co-operating with police, as mentioned above, I deduct 1 year, leaving a balance of 7 years imprisonment.
8. Mr. Inoke Siva, for unlawfully possessing 15 kilograms of cannabis sativa on 20 July 2018, at Suva in the Central Division, I sentence you to 7 years imprisonment, effective forthwith. I will not impose a non-parole period.
9. The Illicit Drugs, which had been tendered at the trial as Prosecution Exhibit No. 5, are to be destroyed by the Chief Registrar's Office, with the assistance of the police, as soon as possible. Before the destruction, the drugs are to be photographed, and the photos to be part of the record. The above is done, as the exhibit is deteriorating.
10. You have 30 days to appeal to the Court of Appeal.



**Solicitor for the State** :  
**Solicitor for the Accused** :

**Office of the Director of Public Prosecution, Suva.**  
**Legal Aid Commission, Suva.**



**Salesi Temo**  
**JUDGE**