

JALE ANISIMAI v STATE (HAA0066 of 2003S)

HIGH COURT — APPELLATE JURISDICTION

5 SHAMEEM J

6, 13 February 2004

10 **Criminal law — appeals — possession of dangerous drugs — reduction of sentence — whether 12 months' imprisonment for possession of Indian hemp harsh — Dangerous Drugs Act (Cap 114) ss 8(b), 41(2).**

15 On 13 July 2002, Special Constable Vilikesa saw the Appellant at Tacirua carrying a white plastic bag containing dried leaves. The dried leaves were analysed and turned out to be cannabis sativa or Indian hemp. The Appellant disclosed during the police interview that he was selling yaqona and found the plastic bag at the bus stop. He likewise said that it did not belong to him and that the large amount of money found with him was money he earned in selling yaqona.

20 The magistrate delivered judgment against the Appellant finding him guilty of possession of Indian hemp contrary to ss 8(b) and 41(2) of the Dangerous Drugs Act (Cap 114) on the ground that he had knowledge that he was in possession of Indian hemp and that it belonged to him. The Appellant was sentenced to 12 months' imprisonment.

25 The Appellant appealed against the magistrate's conviction and asked for a reduction of sentence because he had seven children to look after; was the sole breadwinner in his family; his family was facing financial difficulties; and that he worked as a labourer in a construction company and wanted to return to this employment.

Held — The 12 months' imprisonment was an appropriate starting point. After adjustment for the mitigating and aggravating circumstances, the court found that the 12 months' imprisonment was appropriate.

Appeal dismissed.

30 **Case referred to:**

Harris Ramswaroop v State (HAA0014/01L), cited.

Appellant in person

35 *P. Madanavosa* for the State

Shameem J. This is an appeal against sentence. The Appellant was charged as follows:

Statement of Offence

40 **FOUND IN POSSESSION OF DANGEROUS DRUGS:** Contrary to Section 8(b) and 41(2) of Dangerous Drugs Act 114, amended by the Dangerous Drug Act (Amendment) Decree No 4 of 1990 and Dangerous Drug Act (Amendment) Decree No 1 of 1991.

Particulars of Offence

45 Jale Anisimai on 13 July 2002, at Nasinu in the Central Division was found in possession of 228.9 grammes of Indian Hemp.

50 He was tried on 20 May 2003. The evidence was that on 13 July 2002 at about 3.30 pm, Special Constable Vilikesa met the Appellant at Tacirua. The Appellant was carrying a white plastic bag containing dried leaves. The bag was seized and the Appellant taken to the police station. The leaves were later analysed and found to be 228.9 grams of cannabis sativa or Indian hemp. The Appellant was interviewed under caution. He told the police that he sold yaqona as his business,

and that he found the plastic bag with marijuana in it, at the bus stop. He said it didn't belong to him. He said that the large sum of money also found on him, had been earned by him by selling yaqona.

5 In court the Appellant made an unsworn statement. He said that he had just picked up the plastic bag at the bus stop when the police arrived. He said there were two plastic bags and that he had only taken one. The learned magistrate delivered his judgment on 8 August 2003. He found that the Appellant was in possession of Indian hemp and that he had known that the plastic bag contained Indian hemp because he had handed it over to the police on search.

10 He found that the Appellant had had knowledge that he was in possession of Indian hemp, and that it belonged to him. He convicted him and sentenced him to 12 months' imprisonment.

The Appellant now appeals against this sentence, saying that he has seven children to look after, that he is the sole breadwinner in his family, that his family is facing financial difficulties, that he worked as a labourer in a construction company and wanted to return to this employment. He asked for a reduction of his sentence.

The State opposes the appeal, saying that a sentence of 12 months' imprisonment is not too harsh for someone found in possession of drugs.

20 Prakash J in *Harris Ramswaroop v State* (unreported, HAA0014/01L) declared the minimum mandatory sentences under the Dangerous Drugs Act (Amendment) Decrees in 1990 and 1991 to be unconstitutional. The maximum sentences under those decrees remain. In the absence of settled tariffs in drugs-related cases, a good starting point is the former minimum sentence. The sentence should be adjusted according to mitigating and aggravating circumstances.

25 In this case, 12 months' imprisonment was an appropriate starting point. After adjustment for mitigating and aggravating circumstances, the end result of 12 months' imprisonment is not wrong in principle. The Appellant has already served half his sentence. His appeal is dismissed.

Appeal dismissed.

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