

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 571/2020

BETWEEN: **STATE**

PROSECUTION

AND: **JAI NARAYAN**

ACCUSED

Counsel: PC 3878 Niraj Singh for Police Prosecution
 Accused in person.

Date of Trial – Prosecution's Case: 22, 26 November 2024
Date of Trial – Defence's Case: 26 November 2024
Date of Judgment: 16 January 2025
Date of Sentence: 16 January 2025

SENTENCE

Introduction

1. Mr. Jai Narayan ('the Accused') was found guilty for 1 count of Unlawful Possession of Illicit Drug contrary to section 5(a) of the Illicit Drug Control Act 2009. The particulars of the offence are:

Statement of Offence

Unlawful Possession of Illicit Drug: *Contrary to section 5(a) of the Illicit Drug Control Act 2009.*

Particulars of Offence

Jai Narayan on the 12th day of October 2020 at Vutuni, Ba in the Western Division without lawful authority had in his possession 26.1 grams of illicit drugs namely *Cannabis Sativa*.

2. I now convict the Accused for Unlawful Possession of Illicit Drugs and proceed to sentence him for the offence.
3. The brief facts were as follows:
 - a. On 12 October 2020, PC Savenaca, PC Vunaki, PC Saimoni and PC Sekove had to conduct a raid at the home of Jai Narayan – the Accused.
 - b. The Accused was at home with his parents as such a search was conducted.
 - c. The Accused's room was then searched and PC Savenaca testified that he searched the bed with a mosquito net. When PC Savenaca searched the mosquito net, he saw a white clear plastic which had a paper inside it.
 - d. Upon opening the paper, PC Savenaca stated that he found 6 stems of marijuana leaves. PC Savenaca and PC Vunaki further testified that the Accused admitted to the marijuana leaves being his.
 - e. PC Savenaca then stated that after the Accused admitted to the marijuana leaves belonging to him, the Accused then fled the scene.
 - f. The Accused could not be located as such, the marijuana leaves were seized and taken to the Ba Police Station.
 - g. PC Sekove confirmed that he had done 3 search lists on 12 October 2020 with respect to the items seized from the home of the Accused. One of the search lists pertained to the 6 stems of marijuana leaves which was found. This was tendered as 'PEX2B'.

- h. PC Aman testified that on 14 October 2020, he had been informed that he would be going to Suva to take the drugs in this matter for testing. He testified that he had taken a brown envelope which had been sealed and that he had taken it to the Forensic Unit at Nasova and gave it to the person in charge for testing. The Certificate of Analysis was tendered as 'PEX1' which confirmed that the sample was cannabis sativa with a weight of 26.1 grams.
- i. PC Vunaki and PC Sekove further testified that the Accused was arrested after a few days when he came to the Station with his lawyer.

Objective Seriousness

- 4. Considering that such an offence is quite prevalent in our society, I find the objective seriousness as being high.

Sentencing Regime

- 5. The maximum penalty for Unlawful Possession of Illicit Drugs is a fine not exceeding \$1 million or imprisonment for life or both.
- 6. His Lordship Justice Temo in Kaitani v State Criminal Petition No. CAV 011 of 2023 (29 October 2024) proposed the following 5 categories with the suggested tariffs, which is now the guideline followed by all courts when sentencing for any offence pertaining to cannabis sativa:

(i) Category 1: (0 gram to 1000 grams/1kg)

Possession/cultivation/offending verbs of cannabis sativa. Like Sulua v State, a non-custodial sentence is to be given in this category. With recent discovery of 4 tons of methamphetamine in Nadi earlier this year, there is no need for the State to waste its resources on this category. The cases can be disposed by fines, community services, 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 (1 kg to 5 kg)

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 1 to 4 years imprisonment, with liberty to the Trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(iii) Category 3 (5 kg to 10 kg)

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 4 to 8 years imprisonment, with liberty to the Trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(iv) Category 4 (10 kg to 150 kg)

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be a sentence between 8 to 16 years imprisonment, with liberty to the Trial Magistrate/Judge to sentence at what level of the tariff, depending on the mitigating and aggravating factors.

(iv) Category 5 (150 kg and above)

Possession/cultivation/offending verbs of cannabis sativa. Tariff should be life imprisonment, with liberty to the Trial Judge to fix a minimum term, depending on the aggravating and mitigating factors, from which to apply for a pardon from His Excellency the President.

Mitigating and Aggravating Factors

7. The Court notes the mitigation offered by the Accused.
8. Further, the Court was informed that you have the following previous convictions:
 - i. Assault Occasioning Actual Bodily Harm – Ba CF 584/14 – Sentenced on 1 July 2015 to a fine of \$50.00 of which \$25.00 to be paid to the Complainant. Pursuant to section to section 45 of the SPD, dismissal of charge. 90 days to pay in default 14 days imprisonment.
9. You have not provided the Court with any evidence of any significant contributions made by you to your community. As such, considering section 5 of the Sentencing and Penalties Act 2009, the Court is unable to provide you any discount for your previous character.
10. The aggravating factor in this matter is that the Accused fled the scene after admitting to the marijuana being his.

Sentence

11. In sentencing the Accused, the Court has taken into account the factors outlined in section 4(1)-(2) of the Sentencing and Penalties Act 2009.
12. Considering the objective seriousness and the fact that this is a category 1 offending under *Kaitani* [supra], I take a starting point of 2 months. I will then add 2 months for the aggravating factor mentioned at paragraph 10 herein, making it a total of 4 months imprisonment. For the Accused's mitigating circumstances, being that since his last previous conviction on 1 July 2015, he has not re-offended until this matter, I will deduct 1 month leaving the Accused with a balance of 3 months imprisonment.
13. Section 26(1) of the Sentencing and Penalties Act allows a court to make an order suspending the whole or part of the sentence if it is satisfied that it is appropriate to do so in the circumstances whilst section 26(2)(b) provides the Magistrates Court with the discretion to suspend a sentence where the sentence does not exceed 2 years.
14. Thus, considering the circumstances in which this offending took place in conjunction with the Accused chances of rehabilitation, I am of the view that this is a case that can be suspended as the final sentence does not exceed 2 years. I will suspend the 3 months imprisonment term for a period of 3 years.
15. If you commit any crime during the 3 years, you are liable to be charged and prosecuted for an offending pursuant to section 28 of the Sentencing and Penalties Act.
16. Any party aggrieved with the Court's decision has 28 days to appeal to the High Court.



N. Mishra
Resident Magistrate

