

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**REVISIONAL JURISDICTION**

**CRIMINAL REVIEW CASE NO. HAR 008 OF 2012S**

**STATE**

**VS**

**OTETI SIVONATOTO**

**Counsel : Mr. L. Fotofili for the State**  
**Accused in Person**  
**Hearing : 15<sup>th</sup> March, 2013**  
**Judgment : 02<sup>nd</sup> May, 2013**

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**JUDGMENT**

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1. On 10<sup>th</sup> April, 2012, the accused appeared in the Suva Magistrates Court, on the following charge:

**Statement of Offence**

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

### Particulars of Offence

**OTETI SIVOINATOTO**, on the 21<sup>st</sup> day of March, 2012, at Naluvea Landing, Vunisea, Kadavu, in the Eastern Division without lawful authority, possessed 480.9 grams of Indian Hemp botanically known as Cannabis Sativa, an Illicit Drug.

2. On 27<sup>th</sup> March, 2012, during his first appearance, the accused waived his right to counsel. On 10<sup>th</sup> April 2012, the charge was read to him. He said, he understood the same, and he pleaded guilty out of his own free will. The summary of facts was read to him on 13<sup>th</sup> April 2012. He admitted unlawfully possessing 480.9 grams of Indian hemp, on 21<sup>st</sup> March, 2012, at Kadavu in the Eastern Division. He was found guilty, and convicted accordingly.
3. He submitted his plea in mitigation. He said, he was 27 years old and married. He said, he is a farmer, and looks after his grandmother and a disabled brother. He said, he also supports a brother at the Fiji National University. He said, he admitted the offence.
4. The court delivered a written sentence on 13<sup>th</sup> April, 2012. It relied on the authority of Meli Bavesi vs The State, Criminal Appeal No. HAA 027 of 2004, High Court, Suva. It started with a sentence of 18 months imprisonment. It deducted 6 months for his guilty plea, 2 months for the previous good behaviour, and 17 days for being remanded in custody. The final sentence was 9 months 14 days, and the same was suspended for 2 years.
5. On 31<sup>st</sup> May, 2012, the Fiji Court of Appeal delivered a guideline judgment on drug sentencing in Fiji, in Kini Sulua, Michael Ashley Chandra, v The State. Criminal Appeal Nos. AAU 0093 of 2008 and AAU 0074 of 2008. It set the following sentencing guideline for drug offending in Fiji:
  - (i) **Category 1:** possession of 0 – 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.

- (ii) **Category 2:** possession of 100 to 1,000 grams 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. Tariffs 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.

6. Meli Bavesi v The State (supra) is no longer the law. Subject to any decision of the Supreme Court of Fiji, Kini Sulua, Michael Ashley Chandra v The State (supra) is now the law, and must be applied in this case. Possessing 480.9 grams of Indian hemp is now classified as a Category 2 offence. The tariff is a sentence between 1 to 3 years imprisonment. The Magistrate Court's 18 months imprisonment starting point was correct. The 6 months deduction for the guilty plea, the 2 months deduction for previous good behaviour, were proper. For been in custody for 17 days, I would deduct 1 month. Total deduction would therefore come to 9 months. The Learned Magistrate found no aggravating circumstances. The final sentence should therefore be 9 months imprisonment. It should not have been suspended. In my view, the justice of this case demanded a sentence of 9 months imprisonment, from 13<sup>th</sup> April 2012.

7. Pursuant to section 262(1)(a) of the Criminal Procedure Decree 2009, I make the following orders and directions:

- (i) The Suva Magistrate Court's 13<sup>th</sup> April 2012 sentence of 9 months 14 days imprisonment, suspended for 2 years, is quashed and set aside;
- (ii) In substitution thereof, the accused is sentenced to 9 months imprisonment from 13<sup>th</sup> April, 2012; but since he had been remanded in custody since 19<sup>th</sup> October 2012, that is, 6 months 13 days ago, in my view, he has served his sentence;
- (iii) The accused is free to go home.

**Salesi Temo**  
**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecutions, Suva**  
**Solicitor for Accused** : **Accused in Person**