

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 255 OF 2017S

STATE

vs

NEMANI RAVIA

Counsels : Mr. I. Rakaria for State
Ms. S. Prakash and Ms. N. Pratap for Accused
Hearings : 23, 24, 25 and 26 April, 2019.
Summing Up : 29 April, 2019.
Judgment : 29 April, 2019.
Sentence : 30 April, 2019.

SENTENCE

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

"Statement of Offence

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

Particulars of Offence

NEMANI RAVIA on the 9th day of June 2017, at Naqia Village, Wainibuka, in the Eastern Division, without lawful authority, cultivated 87 plants of cannabis sativa, an illicit drug, weighing 34.2 kilograms".

2. The brief facts were as follows. On 9 June 2017, you led police through bush tracks to your marijuana farm, which was located high up in the mountains, some one hour travel from your residence at Naqia, Wainibuka, Tailevu. On the farm, you were growing marijuana plants. The police uprooted the same, and took it for analysis by their forensic officers. There were 87 marijuana plants and materials, and the same weighed 34.2 kilograms. When analyzed, the plants and materials were found to be cannabis sativa. You verbally admitted to police that the farm and plants were yours. You have been tried and convicted in the Suva High Court of unlawful cultivation of illicit drugs.

3. The cultivation of illicit drugs in Fiji is viewed seriously by the Parliament of the Republic of Fiji, and it carried a maximum penalty of a fine not exceeding \$1,000,000 or life imprisonment or both (section 5 (a) of the Illicit Drugs Control Act 2004).

4. In **Kini Sulua, Michael Ashley Chandra v The State**, Fiji Law Reports, Volume 2, 2012, pages 111 to 147, page 143, after considering 50 cases of illicit drug offendings in Fiji, the Fiji Court of Appeal (majority) laid down the following sentencing guidelines:
 - (i) **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.

 - (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. 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.

5. The facts of this case, brings the case within category 4. The accused was found guilty and convicted of unlawfully cultivating 34.2 kilograms of cannabis sativa plants/materials, an illicit drug, on 9 June 2017, at Naqia, Wainibuka, Tailevu. The evils of illicit drugs had been well debated in Parliament during the passage of the "Illicit Drugs Control Act 2004" in May 2004 [see paragraph 111 of Kini Sulua, Michael Ashley Chandra v The State (supra)].
6. In this case, the aggravating factor was as follows:
 - (i) The amount of illicit drugs cultivated was huge, that is, 34.2 kg. This was 6.5 times the illicit drugs found on Kini Sulua in the Court of Appeal case mentioned in paragraphs 4 and 5 hereof.
7. The mitigating factors were as follows:
 - (i) You co-operated with police during the investigation, by showing them your farm, when requested; and
 - (ii) You had been remanded in custody for 58 days, while awaiting trial.
8. I start with a sentence of 10 years imprisonment. I add 4 years for the aggravating factors, making a total of 14 years imprisonment. For time already served while remanded in custody, I deduct 3 months, leaving a balance of 13 years 9 months imprisonment. For co-operating with police, I deduct 1 year 9 months, leaving a balance of 12 years imprisonment.

9. Mr. Nemani Ravia, for unlawfully cultivating 34.2 kilograms of cannabis sativa plants, an illicit drug, at Naqia, Wainibuka, Tailevu in the Eastern Division, I sentence you to 12 years imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith.
10. Subject to the Court of Appeal directions, the illicit drugs, tendered as Prosecution Exhibit Nos. 6 (A), 6 (B) and 6 (C), are to be destroyed by the Chief Registrar's office, with the assistance of the police, if no appeal is done within 40 days from today.
11. You have 30 days to appeal to the Court of Appeal.



Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**