

IN THE HIGH COURT OF FIJI
IN SUVA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO. HAA 007 OF 2022S

BETWEEN : JALE UCUBOI

APPELLANT

AND : THE STATE

RESPONDENT

Counsels : Appellant in Person
Ms. S. Shameen for State

Hearing : 21 July, 2022.

Judgment : 30 March, 2023.

JUDGMENT

1. On 5 June 2019, in the presence of his counsel Mr. J. Nasa, in the Suva Magistrate Court, the following charge was read over and explained to the appellant (accused):

“Statement of Offence

FOUND IN POSSESSION OF ILLICIT DRUGS: *Contrary to Section 5 [a] of the Illicit Drug Control Act 2004.*

Particulars of Offence

JONE KARITAKIA, LIVAI KOROI, SALOTE VULI, JALE UCUBOI and JIKO TANIELA, on the 8th day of December 2018, at Lami in the Central Division, without lawful authority had in their possession 6328.6 grams of Indian hemp leaves botanically known as Cannabis Sativa, an illicit drug.”

2. He was jointly charged with four others. The appellant said, in page 24 of the record that, he understood the charge and pleaded guilty to the same. He told the court that he pleaded guilty voluntarily and out of his own free will.
3. The learned magistrate, in her sentencing remark on 30 October 2019, recorded the summary of facts as follows:

“Summary of Facts

2. *The Summary of facts was read and explained to you and after informing the court that you understood the same, you admitted to the said facts. The facts revealed that on 08/12/2018 between 5.00 pm and 6.00 pm, Inspector Ulaiasi Robanakadavu and his team from the Totogo Police Station were returning from Pacific Harbour and when they spotted a white Hybrid vehicle registration number JM 716 pulling out from the mangroves near the Veisari Bridge. Inspector Robanakadavu became suspicious about the said vehicle as it was coming out of a well known drug pick up spot. The said inspector then drove past the Veisari Bridge then turned the Police Vehicle registration number GQ 189 (Fleet No. 311) around and pursued the white hybrid vehicle which was heading towards Navua. They caught up with the said Hybrid at the Bilo Road stretch. He signalled for the driver of the Hybrid to stop the vehicle. Inspector Robanakadavu and his team members approached the said vehicle and saw Jale Ucuboi and his co-accuseds inside of the Hybrid. They could also smell the scent of marijuana coming out of the vehicle.*
3. *PC 5704 Peceli Nadawe proceeded to the back of the Hybrid vehicle and opened the boot. He found a big black parcel wrapped with Glad Wrap. Inspector Robanakadavu then questioned Jale Ucuboi and his co-accuseds with regards to the said parcel. The inspector then arrested Jale*

Ucuboi and his co-accuseds and escorted them to the Lami Police Station where he lodged a report. When at the Lami Police Station, in the presence of the Investigation Officer, WDC 3767 Maritina, Jale Ucuboi and his co-accuseds, Inspector Robanakadavu then unwrapped the black parcel which was found in the Hybrid vehicle occupied by Jale Ucuboi and his co-accuseds. The black parcel contained 15 x bundle of dried leaves and 1 x bundle of dried leaves wrapped separately in clear Glad Wrap. The said seized bundles of dried leaves were listed and Inspector Robanakadavu handed same to WDC 3767 Maritina for safe keeping in the Exhibit Room. A total sum of cash amounting to \$2,049.10 was seized from possession of Jale Ucuboi and his co-accuseds and same was entered into the Search List.

- 4. On 09/12/2018, DC 4928 Lasarusa interviewed Jale Ucuboi under caution and the dried leaves that were found in their possession were shown to him. During the interview Ucuboi stated that they travelled in a fiber glass boat from Walu Bay to the exchange point at sea and brought the said dried leaves that were found in their possession.*
- 5. Then on 10/12/2018, WDC 3767 Martitina took the dried leaves to the Fiji Police Chemistry Laboratory for testing. Venti Vanil Chandra, the Senior Scientific Officer conducted the analysis and confirmed that the test result were positive for Indian Hemp botanically known as Cannabis Sativa, an illicit drug with a total weight of 6328.6 grams.*
- 6. WDC 3767 Maritina later collected the results together with the sealed exhibit from the Chemistry Laboratory and handed it over to DC 4928 Lasarusa for safe keeping.”*

4. You had been found guilty as charged and convicted of the same on 30 October 2019. The learned Magistrate had taken into account your plea in mitigation. She found no aggravating factors. In the end, the learned Magistrate sentenced you to 6 years imprisonment, with a non-parole period of 5 years from 30 October 2019. You are not appealing your conviction. However, you are not happy with

your sentence. It appeared you are saying the sentence was harsh and excessive.

5. I had carefully read the court record to find out whether or not your appeal against sentence were justified or not. However, from a reading of the learned Magistrate's sentencing remarks, she approached the law and the sentencing process properly. She made no error of law. However given that you pleaded guilty to the charge on 5 June 2019, approximately 6 months after first call in the Suva Magistrate Court, a measure of leniency ought to be extended to you, in the interest of justice.
6. I partly allow your sentence appeal, in the following way:
- (i) The 6 years imprisonment, with a 5 year non-parole period dated 30 October 2019 is set aside;
 - (ii) And in substitution thereof, a sentence of 3 years imprisonment is backdated to 30 October 2019. No non-parole period is imposed.



Salesi Temo
Acting Chief Justice

Solicitor for Appellant : In Person.
Solicitor for Respondent : Office of the Director of Public Prosecution, Suva