

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 061 OF 2016S

STATE

vs

TOMASI TAWAKE

Counsels : Mr. Y. Prasad for State
Ms. C. Chooy for Accused
Hearing : 18 and 23 March, 2016
Sentence : 1 April, 2016

SENTENCE

1. On 18 March, 2016 in the presence of his counsel, the accused pleaded guilty to 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

TOMASI TAWAKE on the 25th day of January 2016 at Vatudavila Settlement, Waibau, Naitasiri in the Central Division, without lawful authority cultivated 84.6 kilograms of cannabis sativa, an illicit drug.

2. On 23 March 2016, the prosecution read their summary of facts in court. They were as follows. The police were alerted by an unknown caller that the accused was cultivating cannabis sativa plants at his farm at Vatudavila Settlement in Waibau, Naitasiri. On 25 January 2016, a group

of police officers from the Drug Unit at Nausori raided the accused's farm. They went to his house. He was there. The police questioned him on the above. He admitted to police that he was cultivating cannabis sativa plants, and led them to his farm.

3. At the accused's farm, the police saw 76 cannabis sativa plants. The police uprooted and seized the plants. On 26 January 2016, tests were carried out on the plants by the government analyst, and she confirmed that the plants were cannabis sativa and weighed a total 84.6 kg. The accused was caution interviewed by police on the same day, and he admitted cultivating the above plants. He was later formally charged with "Unlawful Cultivation of Illicit Drugs", contrary to section 5(a) of the Illicit Drugs Control Act 2004.
4. The court checked with defence counsel on whether or not the accused had admitted all elements of the offence. Defence counsel said that her client admitted the prosecution's summary of facts, and admitted unlawful cultivation of the above cannabis sativa plants, weighing 84.6 kg, on 25 January 2016. As a result of the above, the court found the accused guilty as charged and convicted him accordingly.
5. 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).
6. In **Kini Sulua, Michael Ashley Chandra v The State**, Criminal Appeal No. AAU 0093 and AAU 0074 of 2008, 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, 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**: possession of 100 to 1,000 gram 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.

7. The facts of this case brings the case within category 4. The accused has been found guilty and convicted of cultivating 84.6 kg of cannabis sativa plants, an illicit drug, on 25 January 2016, at Naitasiri in the Central Division. The evils of illicit drugs had been well debated in Parliament during the passage of the "Illicit Drugs Control Bill 2004 in May 2004 [see paragraph 111 of **Kini Sulua, Michael Ashley Chandra v The State** (supra)].
8. In this case, the aggravating factor was as follows:
 - (i) The amount of illicit drugs cultivated was huge, that is, 84.6 kg. This was approximately 17 times the illicit drug found on Kini Sulua in the Court of Appeal case mentioned in paragraph 6 hereof.
9. The mitigating factors were as follows:
 - (i) At the age of 51 years old, this was the accused's first offence;
 - (ii) The accused pleaded guilty early and therefore saved the court's time;
 - (iii) The accused had been remanded in custody since 27 January 2016, that is, 2 months 4 days ago;
 - (iv) The accused co-operated with the police during the investigation;
 - (v) Married with 4 young children, a farmer and the sole bread winner.
10. I start with a sentence of 12 years imprisonment. I add 6 years for the aggravating factor, making a total of 18 years imprisonment. For being a first offender, I deduct 1 year, leaving a balance of 17 years. For pleading guilty early, I deduct 2 years, leaving a balance of 15 years imprisonment. For being remanded in custody for 2 months 4 days, I deduct 3 months, leaving a balance of 14 years 9 months. For co-operating with the police during the investigation, I deduct 9 months, leaving a balance of 14 years imprisonment. For mitigating factor paragraph 9 (v), I deduct 1 year, leaving a balance of 13 years imprisonment.
11. Mr. Tomasi Tawake, for cultivating cannabis sativa plants, an illicit drug, on 25 January 2016, at Naitasari in the Central Division, I sentence you to 13 years imprisonment, with a non-parole period of 12 years imprisonment, effective forthwith.
12. This sentence is a warning to all those cultivating cannabis sativa plants in the Central Division. Plant legitimate crops, otherwise you will loose your liberty.



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JUDGE

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