

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION  
CRIMINAL CASE NO. HAC 287 OF 2015S

STATE

vs

ACURA QARANIVALU

Counsels : Mr. M. Vosawale and Mr. E. Samisoni for State  
Accused in Person  
Hearings : 29 May, 1, 2, and 5 June, 2017  
Summing Up : 6 June, 2017  
Judgment : 6 June, 2017  
Sentence : 7 June, 2017

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**SENTENCE**

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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.

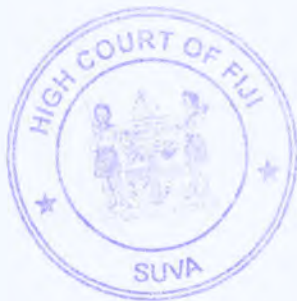
*Particulars of Offence*

ACURA QARANIVALU on the 3<sup>rd</sup> day of January 2012, at Vuravu Farm, Daku Village, Kadavu, in the Southern Division, without lawful authority cultivated 32 plants of cannabis sativa an illicit drug, weighing 11.0 kilograms.

2. The facts of your case were as follows. On 3 January 2012, the police received information that people were cultivating cannabis sativa plants (ie. Marijuana plants) around the Vuravu Settlement area. A team of police officers from Kadavu Police Station then went to one Apakuki's house to execute a search warrant. Another group of police officers raided a nearby farm where numerous marijuana plants were uprooted. Police discovered that you were drying 32 plants of marijuana at Apakuki's house.
3. They seized the plants and took it to Koronivia Research Station for analysis on 9 January 2012. It was found that the plants were cannabis sativa and they weighed 11 kilograms. You were caution interviewed by police on 7 January 2012. You admitted to police that you had been cultivating cannabis sativa plants, with others, on 3 January 2012. As a result, you were later charged for unlawful cultivating of illicit drugs.
4. The maximum sentence for "Unlawful Cultivation of cannabis sativa plants, an illicit drug", is a fine of \$1,000,000 or life imprisonment or both (section 5 (a) of the Illicit Drugs Control Act 2004). Society, through Parliament, viewed the offence seriously. In **Kini Sulua, Michael Ashley Chandra v State** [2012] Fiji Law Reports, Volume 2, page 111, at paragraph 115 on page 143, the majority in the Court of Appeal laid down the following sentence guideline:
  - (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.
5. Although the above sentence guidelines apply to possession of cannabis sativa drugs, they also apply to unlawful cultivation of cannabis sativa plants. Please, refer to paragraph 116 and 117 of **Kini Sulua, Michael Ashley Chandra v State** (supra) in pages 143 and 144. The weight of the drugs in this case being 11 kilograms, it makes the case a Category 4 case. The tariff is therefore a sentence between 7 to 14 years imprisonment. However, the final sentence will depend on the aggravating and mitigating factors.
6. In this case, the aggravating factor, was as follows:
- (i) The amount of illicit drugs that you cultivated were huge, that is, it weighed 11 kilogram. This was about double the amount of drugs found on Kini Sulua in the case mentioned above. Kini Sulua got a sentence of 8 years imprisonment for possessing 5.2 kilograms of cannabis sativa.
7. The mitigating factors, in this case, were as follows:
- (i) At the age of 28 years old, this was your first offence;
- (ii) You had been remanded in custody since 10 June 2016, that is, approximately 1 year ago.
8. I start with a sentence of 12 years imprisonment. I add 3 years for the aggravating factor, making a total of 15 years imprisonment. I deduct 1 year for time already served while remanded in custody, leaving a balance of 14 years. For being a first offender at 28 years old, I deduct 2 years, leaving a balance of 12 years imprisonment.
9. Mr. Acura Qaranivalu, for unlawfully cultivating 11 kilograms of cannabis sativa plants at Kadavu on 3 January 2012, I sentence you to 12 years imprisonment, with a non-parole period of 10 years imprisonment.

10. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances, to protect the community from the people who start the evils of illicit drugs by cultivating them, to deter other would-be offenders and to signify that the court and the community denounce the cultivation of illicit drugs in this country.
11. You have 30 days to appeal to the Court of Appeal.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for State : Office of the Director of Public Prosecution, Suva.**

**Solicitor for Accused : Accused In Person.**