

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 006 OF 2016LAB

STATE

V

JONE SERU

Counsels : Mr. R. Kumar for State
Accused in Person

Hearings : 17, 18, 19 and 20 July, 2017

Summing Up : 21 July, 2017

Judgment : 24 July, 2017

Sentence : 25 July, 2017

SENTENCE

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

Statement of Office (a)

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

Particulars of Offence (b)

JONE SERU between the 1st day of October 2011 and the 8th day of February 2012 at Savusavu in the Northern Division, without lawful authority cultivated 5500 grams or 5.5 kilograms of illicit drugs namely cannabis sativa.

2. The brief facts were as follows. Between 1 October 2011 and 8 February 2012, you had been cultivating cannabis sativa plants at Savusavu. Your drug farm was actually situated 100 meters from the Savusavu Magistrate Court. On 8 February 2012, a police officer PC 4799 Peter Pickering (PW1) came to your drug farm and saw you hiding in the same. He chased and arrested you later. Police Officers arrived and uprooted the cannabis sativa plants from your farm. It was later taken to Koronivia Research Station for analysis. The Government Analyst confirmed the plants were cannabis sativa and weighed 5.5 kilograms. You were interviewed by police on 8 and 9 February 2012. You admitted the offence. You were tried and convicted later on the same.
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, 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

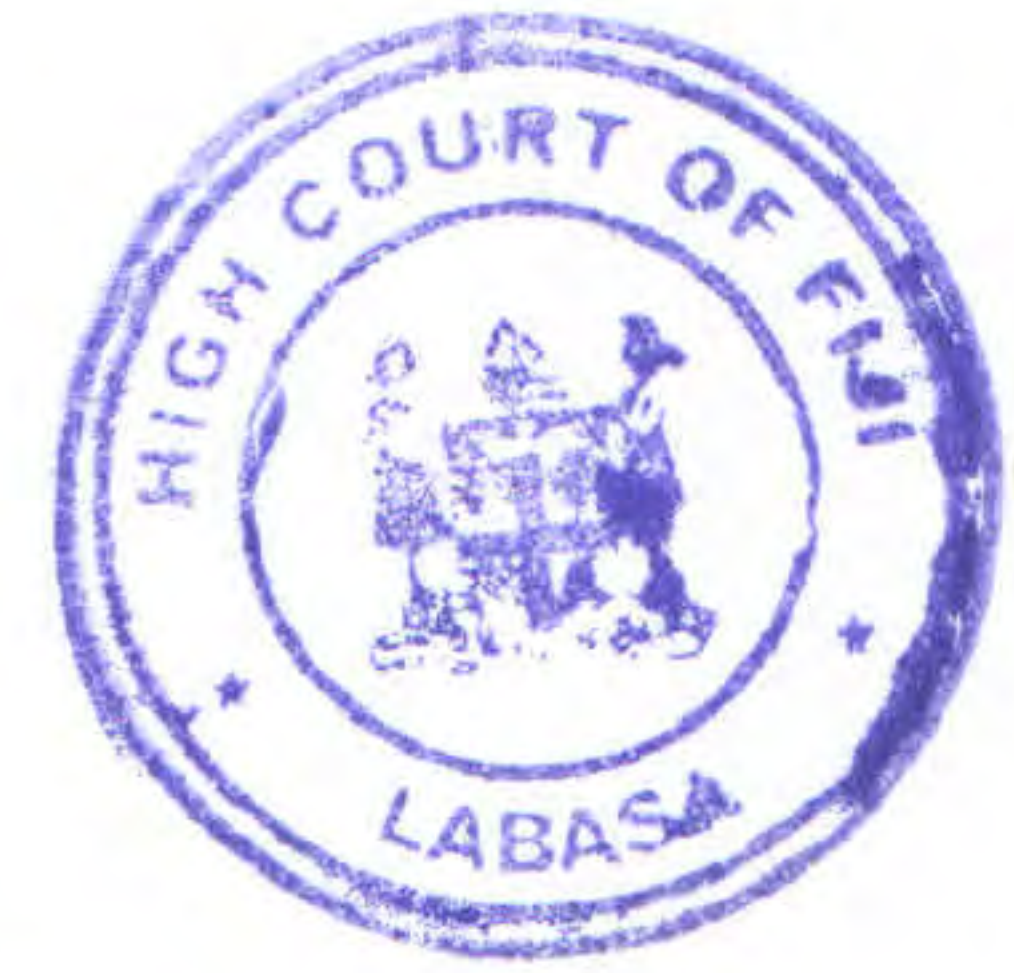
to less than 4 years imprisonment, and those possessing more than 2,500 grams, be sentenced to more than 4 years.

(iv) **Category 4:** possessing 4,000 grams and above of cannabis sativa. Tariff should be a sentence between 7 to 14 years imprisonment.

5. The facts of this case, brings the case within category 4. The accused was found guilty and convicted of cultivating 5.5 kg of cannabis sativa plants, an illicit drug, between 1 October 2011 and 8 February 2012, at Savusavu in the Northern 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)].
6. In this case, the aggravating factors were as follows:
 - (i) The amount of illicit drugs cultivated was huge, that is, 5.5 kg. This was about the same amount of the illicit drugs found on Kini Sulua in the Court of Appeal case mentioned in paragraph 4 and 5 hereof.
 - (ii) You were planting cannabis sativa 100 meters from the Savusavu Magistrate Court, showing you had no respect for the Savusavu Magistrate Court.
7. The mitigating factors were as follows:
 - (i) At the age of 35 years, this was your first drug offending in the last 10 years;
 - (ii) In the Magistrate Court, you had been remanded in custody for a total of approximately 4 months, while in the High Court, you had been remanded in custody for approximately 1 year 4 months 10 days. Approximately total time spent in remand was 1 year 8 months 10 days.
8. I start with a sentence of 9 years imprisonment. For the aggravating factors, I add 2 years, making a total of 11 years imprisonment. For time already served while remanded in custody, I deduct 1 year 9 months, leaving a balance of 9 years 3 months. For this offence, being his first in the last 10 years, I deduct 3 months, leaving a balance of 9 years imprisonment.
9. Mr. Jone Seru, for unlawfully cultivating 5.5 kilograms of cannabis sativa, an illicit drugs, between 1 October 2011 and 8 February 2012, at Savusavu in the Northern Division, without lawful authority, I sentence you to 9 years imprisonment, with a non-parole period of 8 years imprisonment, effective forthwith.

10. This sentence is a warning to all those cultivating cannabis sativa plants in the Northern Division. Plant legitimate crops, otherwise you will loose your liberty.
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, Labasa**
Solicitor for the Accused : **In Person**