

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 257 OF 2010S

STATE

vs

LEPANI VEIMUSU

Counsels : **Mr. S. Vodokisolomone for the State**
Mr. Q. Bale for Accused
Hearings : **1st to 4th and 18th May, 2012**
Sentence : **8th June, 2012**

SENTENCE

1. On 1st May, 2012, in the presence of his counsel, the accused pleaded not guilty to two counts of rape, in the following information:

FIRST COUNT

Statement of Offence

RAPE: contrary to section 149 and 150 of the Penal Code, Cap 17.

Particulars of Offence

LEPANI VIMUSU on the 19th day of May 2008, at Kadavu, in the Eastern Division, had unlawful carnal knowledge of a woman namely **TOKASA VOSA** without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to Section 149 and 150 of the Penal Code, Cap 17.

Particulars of Offence

LEPANI VIMUSU on the 19th day of May 2008, at Kadavu, in the Eastern Division, had unlawfully carnal knowledge of a woman namely **TOKASA VOSA** without her consent.

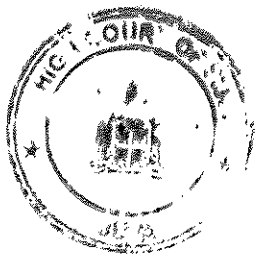
2. The prosecutor then called the complainant and 5 other state witnesses from 1st to 3rd May 2012. He then closed his case. Both parties conceded there was a prima facie case against the accused, and he ought to be put to his defence. The court agreed, and ruled accordingly. The defence asked for time to consider their position.
3. On 4th May, 2012, defence counsel indicated that he and his client have discussed the matter, and his client intended to change his plea to guilty on both counts. The information was then read to the accused, in the presence of his counsel. He pleaded guilty to both counts. The prosecution said, the facts had been presented by the complainant in court, when she was giving evidence.
4. Briefly, the complainant said the following. On 18th May 2008, at Kadavu in the Ono Islands area, she went with the accused, in his boat from Dravuni Village to Natusara Island. She was taking her son to Natusara Primary School. After 5 pm, she returned to Dravuni, via the accused's boat. However, the boat experienced problems, and it was drifting in a group of islands, before Dravuni Village. Only the complainant and the accused were in the boat. They drifted throughout the night, and it was getting cold.
5. The accused gave the only blanket to the complainant, to cover herself, and keep warm. A while later, the accused came and shared the blanket with the complainant. He somehow got aroused, forcefully separated the complainant legs and forcefully inserted his penis into her vagina. The complainant did not consent, and he knew she was not consenting to sex, at the time. The complainant was totally helpless. She was in the sea, and she could not swim. A while later, the accused again repeated the above to the complainant.

6. The court checked with defence counsel, to see that they are agreeing to all the elements of the offences. Through counsel, the accused admitted that, he inserted his penis into the complainant's vagina, at the material times, without her consent, and that he knew she was not consenting to sex at the time. He admitted that the above occurred, at the time, he had sex with the complainant twice that night. On the basis of these admissions, the court found the accused guilty as charged on both counts, and convicted him accordingly, on those counts.
7. I have noted that the accused is a first offender. He has not committed any offence in the last 10 years. I have carefully read and considered his plea in mitigation. I have considered your antecedent report and the victim impact report. I have considered the submission made by the parties.
8. Rape is a serious offence. The maximum sentence is life imprisonment. For adults, the tariff is a sentence between 7 to 15 years imprisonment: see *Mohammed Kasim v The State*, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; *Bera Yalimawai v The State*, Criminal Appeal No. AAU 0033 of 2003, Fiji Court of Appeal; *Navuniani Koroi v The State*, Criminal Appeal No. AAU 0037 of 2002, Fiji Court of Appeal and *Viliame Tamani v The State*, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal. The actual sentence will depend on the mitigating and aggravating factors.
9. In this case, the mitigating factors were as follows:
 - (i) The accused is 60 years old, married with 4 children;
 - (ii) He is a first offender, that is, he has not committed an offence in the last 10 years;
 - (iii) The accused has apologized to the complainant and his village elders, for the offence he had done;
 - (iv) This matter has been hanging over his head since May 2008, and the worry and anxiety it caused, was a punishment, in itself;
 - (v) He pleaded guilty, although this was after the prosecution closed their case. He nevertheless saved the court's time, as a result.
10. The aggravating factors were as follows:
 - (i) This was a serious breach of trust. The accused was the elder brother of the complainant's husband, who died in 2008. The accused thereby stood in a position of trust

to the complainant, who was his sister-in-law. He was supposed to look after her, and care for her. Instead, he raped her, when she was vulnerable in his boat, out at sea, at the time. He breach the trust she had in him,

- (ii) Furthermore, by committing the crime, the accused showed utter disregard to the complainant's right as an individual, including her dignity;
- (iii) The accused was extremely selfish in forcing himself on the complainant, without seeking her consent.

11. On count no. 1, I start with a sentence of 7 years imprisonment. For the aggravating factors, I increase the sentence by 3 years to 10 years imprisonment. For the mitigating factors, I decrease the sentence by 3 years to 7 years imprisonment. I sentence you to 7 years imprisonment.
12. On count no. 2, I repeat the above process and sentence. I sentence you to 7 years imprisonment.
13. The sentence in count no. 1 is concurrent to the sentence in count no. 2, that is, a total sentence of 7 years imprisonment. You are to serve a non-parole period of 5 years imprisonment.



A handwritten signature in black ink, appearing to read 'Salesi Temo'.

Salesi Temo
JUDGE

Solicitors for the State : Office of Director of Public Prosecution, Suva.
Solicitor for Accused : Q. Bale, Barrister and Solicitor, Suva.