

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 12 OF 2013

STATE

-v-

JONE SOKIVETA

Counsels : Mr. Semi Babitu for the State

Accused in Person

Date of Hearing : 07 August 2013

Date of Sentence : 08 August 2013

(Names of the two victims suppressed. They are referred to as Ms. KLR and Ms. AD)

SENTENCE

1. The Director of Public Prosecutions preferred following charges against the accused above named.

COUNT 1

Statement of Offence

BURGLARY: Contrary to Section 312 (3) (a) and (b) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JONE SOKIVETA on the 23rd day of December 2012 at Bemana, Navosa in the Western Division entered the dwelling house of **KLR**, as a trespasser, with intent to cause harm therein.

COUNT 2

Statement of Offence

COMMON ASSAULT: Contrary to Section 274 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JONE SOKIVETA on the 23rd day of December 2012 at Bemana, Navosa in the Western Division assaulted **AD** by slapping her on the cheeks.

COUNT 3

Statement of Offence

COMMON ASSAULT: Contrary to Section 274 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JONE SOKIVETA on the 23rd day of December 2012 at Bemana, Navosa in the Western Division assaulted **AD** by pushing her against a barbed wire fence.

COUNT 4

Statement of Offence

COMMON ASSAULT: Contrary to Section 274 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JONE SOKIVETA on the 23rd day of December 2012 at Bemana, Navosa in the Western Division assaulted **AD** by punching her on the head.

COUNT 5

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JONE SOKIVETA on the 23rd day of December 2012 at Bemana, Navosa in the Western Division inserted his penis into the vagina of **AD**, without her consent.

COUNT 6

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JONE SOKIVETA on the 23rd day of December 2012 at Bemana, Navosa in the Western Division inserted his penis into the vagina of **AD**, without her consent.

2. When the case was mentioned to take a plea the accused pleaded guilty to all the charges and admitted the Summary of Facts on the next day.
3. The Summary of Facts submitted by the State Counsel states as follows:

The Accused is one **JONE SOKIVETA**, 36 years old, a Farmer of Bemana Village in Navosa in the Western Division.

The First Victim is one **KLR**, 31 years old, a Teacher of Bemana Catholic Secondary School. The Second Victim is one **AD**, 18 years old, a Student of Bemana Catholic Secondary School.

On the 23rd of December 2012, Ms. AD was residing with Ms. KLR in a housing quarter at the Bemana Catholic Secondary School compound. They were at home asleep when the Accused came at about 12pm drunk and wanted to sleep in the house. At that particular time the Accused and Ms. KLR were in a de-facto relationship. Ms. AD informed Ms. KLR that the Accused was outside but the latter informed him to go and sleep in Bemana Village.

COUNT 1: BURGLARY contrary to Section 312 (3) (a) and (b) of the Crimes Decree No. 44 of 2009.

After being told to leave, the Accused got angry and forcefully tried to open the front door. Ms. KLR had to brace herself against the door while Ms. AD stood near the back door. The Accused forcefully opened the back door and entered the house belonging to Ms. KLR as a trespasser with intent to cause harm therein.

COUNT 2: COMMON ASSAULT contrary to Section 274 of the Crimes Decree No. 44 of 2009.

After he forcefully entered the house, Ms. KLR ran outside together with Ms. AD to escape. However, the Accused managed to get hold of Ms. AD and slapped her on the cheek before dragging her outside.

COUNT 3: COMMON ASSAULT contrary to Section 274 of the Crimes Decree No. 44 of 2009.

After he dragged her outside, the Accused pushed her to go towards Bemana Village. On their way towards the Village, Ms. AD heard voices of two men coming towards them. She attempted to seek their help when the Accused grabbed her and pushed her towards a barbed wire.

COUNT 4: COMMON ASSAULT contrary to Section 274 of the Crimes Decree No. 44 of 2009.

The Accused in anger also punched Ms. AD on the head and threatened her to keep quiet as they made their way to the Village.

COUNT 5: RAPE contrary to Section 207 (1) AND (2) (a) of the Crimes Decree No. 44 of 2009.

In order to avoid the two men, the Accused followed another track with Ms. AD at the front. When they came across a plantation of one Semi Kunatani, the Accused pushed her to the ground, forced her shoulders back and forcefully pulled her shorts and maroon panty down before inserting his erected penis into her vagina without her consent. Ms. AD cried in pain but could not defend herself as she was frightened of him.

After sexual intercourse for about 30 minutes, the Accused ejaculated in her and made her sit down. He then told her to accompany him to Bemana Village so Ms. AD got up and dressed herself. At Bemana Village the Accused told her not to tell anyone what had happened which she did. Afterwards, he then told her to accompany her to his farm house which she did.

COUNT 6: RAPE contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

On their way to the Accused's farm with Ms. AD in the front, he suddenly got wild and pulled her shorts down. As she stood, he then attempted to insert his penis into her vagina via her thighs but he could not so he told her bend down. She cried out that she did not want to. He then grabbed hold of her neck with both hands and made her lie down. He then inserted his erected penis into her vagina without her consent. They then had sexual intercourse for about 15 minutes before he ejaculated inside her.

After having forced sexual intercourse with her, the Accused took Ms. AD to his family hall. In the hall, Ms. AD waited for the Accused to fall asleep before she escaped. She then reported the matter to a Police Officer named Uraia before she informed Ms. KLR. Ms. AD was medically examined by Dr. Dasi on the 23rd of December 2012 where the following findings were noted in the Medical Report (annexed as "PE-1"):

1. Bruises on neck
2. Bruises on inner thighs
3. Laceration on vaginal wall
4. Hymen not intact

The Accused was subsequently arrested, interviewed and charged by Police Officers at the Keyasi Police Station.

4. After carefully considering the Plea of the accused to be unequivocal this Court found him guilty for Burglary contrary to Section 312 (3) (a) and (b) of the Crimes Decree No. 44 of 2009, three charges of Common Assault contrary to Section 274 of the Crimes Decree No. 44 of 2009 and two charges of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree No.44 of 2009.
5. Accused you stand convicted for Burglary, three charges of Common Assault and two charges of Rape.
6. Section 312 prescribes a maximum sentence of 13 years imprisonment for Burglary.

7. Section 274 prescribes maximum sentence of 1 year for the offence of Common Assault.
8. According to Section 207 (1) and (2) (a) the maximum penalty for Rape is life imprisonment.
9. The accepted tariff for Burglary is between 18 months and 3 years as held by Madigan J in **State v Vikatore Tabeusi** [2010] FJHC 426; HAC 095-113 of 2010L (16th September 2010) and **State v Jese Mucunabitu** [2010] FJHC 151; HAC 017 of 2010. (15th April 2010).
10. The tariff for Common Assault is with discretion of court and in most cases the sentence is suspended.
11. The tariff for Rape is well settled since the Judgment of then A.H.C.T. Gates J in **State v Marawa** [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a Rape of an adult is 7 years. The tariff is 7 years to 15 years.
12. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed:

“We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point.”
13. The accused person is not a first offender. However he does not have any previous conviction which is in the operational period. The State had confirmed this position.
14. Considering the nature of the offence and all other circumstances I impose 12 months sentence for the count of Burglary.
15. Considering the above and nature of the offence I impose 3 months imprisonment for each offence of Common Assault.
16. For each charge of Rape I commence your sentence at 10 years.
17. State had submitted following aggravating features:

- (a) The injuries caused to the victim,
 - (b) The victim was 18 years old student while the accused was 36 years old,
 - (c) The victim had to undergo the trauma twice on the same day.
18. As the accused is charged separately for the injuries caused to the victim and the two acts of Rape those cannot be considered as aggravating circumstances. However considering the young age of the victim I increase your sentence by 1 year. Now your sentence is 11 years.
19. The mitigating circumstances are:
- (a) You are remorseful.
20. Considering above I reduce 1 year of your sentence. Now your sentence is 10 years.
21. For your early guilty plea I deduct 3 years of your sentence. Now your sentence is 7 years.
22. For the time period in remand I reduce 7 months. Now your sentence is 6 years and 5 months.
23. All the offences stated above were committed in the course of same transaction. Considering the totality principle I order all sentences to run concurrently.
24. Acting under Section 18 (1) of the Sentencing and Penalties Decree I fix 5 years as the period in which you are not eligible to be released on parole.
25. Having considered the nature of relationships you had with the victims, I order a permanent **Domestic Violence Restraining Order (DVRO)** in place, identifying both victims Ms. KLR and Ms. AD as the protected persons. You are hereby ordered not to have any sort of a contact with the victims directly or by any other means, unless otherwise directed by this court.

Summary

26. Your sentence is as follows:

1st count of Burglary 12 months

2nd count of Common Assault 3 months

3rd count of Common Assault 3 months

4th count of Common Assault 3 months

5th count of Rape 6 years and 5 months

6th count of Rape 6 years and 5 months

27. All the sentences to run concurrently. You are not eligible for parole for 5 years.
28. 30 days to appeal.

Sudharshana De Silva
JUDGE

At Lautoka
8th August, 2013

Office of Director of Public Prosecutions for the State
The accused in person