

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 443 OF 2012

BETWEEN: **THE STATE**

A N D: **IOWANE ISIKELI SENILOLOKULA**

Counsel : Ms. Koto L. for the State
 : Mr. Vere N with Mr. Nawaikula N for the Accused

Date of Hearing : 23rd, 24th, 25th, 26th July 2013

Date of Summing Up: 26th July 2013

Date of Sentencing : 31st July 2013

SENTENCE

1. Name and the identity of the victim are hereby ordered to suppress permanently with the request of the Prosecution.
2. **Iowane Isikeli Senilolokula**, you have been convicted for one count of **Rape**: contrary to **section 207 (1) and (2) (b) and (3)** of the **Crimes Decree No. 44 of 2009** after a full trial. The unanimous verdict of guilty of the assessors was endorsed by this court on **26th of July 2013**.
3. **Count:**

Statement of Offence (a)

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009

Particulars of Offence (b)

Iowane Isikeli Senilolokula, on the 01st day of April 2011 and 30th day of June 2011 at the Gospel school for the Deaf, Suva in the Central Division had carnal knowledge of **S.V.** without her consent.

4. There was no dispute from the very outset that you had the carnal knowledge of the complainant. You had admitted it during the caution interview as well and you maintained the same position in the trial process. You were adamant that you engaged in sexual activities with the complainant with her full consent. The argument put forward on your behalf was that though you had committed '**ADULTERY**', your actions do not fall within the ambit of '**RAPE**'. As it was revealed in the trial, you have had penetrated sexual intercourse with the complainant, both to vagina and anus, at least for 06 occasions within the stipulated period in the charge, **01st of April 2011 to 30th of June 2011**, within the premises of Harland Hostel for deaf girls. It was revealed that you had sexual intercourse with the complainant in the living room, the bedroom allocated to you and your wife, the bedroom of your daughter, the bedroom used by the complainant with several other girls and inside a toilet of the said hostel.
5. **Ms. S. V.**, the complainant testified in court that you were the care taker of the girl's hostel along with your wife and the '**Bible Teacher**' of the school. She had called you '**DADDY**'. Evidence transpired in respect of the first sexual intercourse says that you asked the complainant whether she has a boy friend or not and whether she knows anything about '**sex**'. When the complainant answered in negative, you had told her that you will teach her '**sex**' as it is good to get some experience in '**sex**' as she has to marry some day in future. Further, you had told that not to be afraid as "**I am your father and you are my daughter.**" You admitted that you were a **member of the counseling team** of the complainant's school apart from being the Bible teacher and got the opportunity to send the misbehaved girls home had you complained to the school management against them. Your wife, offering evidence on behalf of the defense, endorsed this proposition. **Ms. S. V.** in her evidence stated that on the first night she had sex with you in the living room, she told you the grievances that she had over other girls in the hostel. It is in this factual back ground the unanimous verdict of guilt came out from the assessors and the court did concur with the same.
6. The **maximum penalty** for the offence of **Rape** is life imprisonment. The **tariff** in our jurisdiction for the offence of rape, when sentencing an adult, ranges from **10 – 15 years imprisonment**. (see **Mohammed Kasim v The State**, *Criminal Appeal No. AAU 0021j. 93S (1994) FJCA 25, (27 May 1994)*; **Bera Yalimaiwai v The State**, *Criminal Appeal Case No. AAU 0033 of 2003*, **Navuniani Koroi v The State**, *Criminal Appeal Case No. AAU 0037 of 2002*, **Viliame Tamani v The State**, *Criminal Case Appeal Case No. AAU 0025 OF 2003*, **The State v Bijendra** *Criminal Case No. HAC 127 of 2011*).
7. It is worthy of reminding once again what was highlighted in the case of **Mohammed Kasim v State** (*supra*):

"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."

The Court of Appeal in **Mohammed Kasim** (*supra*) went on to say that sentence for any rape case, without aggravating or mitigating features, the starting point should be at least 7 years imprisonment and stressed upon the fact that the particular circumstances of each case may decide what the proper sentence to be, either substantially higher or substantially lower than that starting point. Whereas **Justice Madigan** pointed out in **State v Leone Kotobalavu Veresa**, (*Criminal Case No: HAC 259 of 2013*) in recent times with the ever increasing counts of rape coming before High Courts, sentences of 7 to 15 years have been handed down to the perpetrators.

8. **Justice Gates**, as he was then, stated in **State v. Marawa** (2004) FJHC 338, that:

“Rape is the most serious sexual offence. Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences” (paragraph 10)

9. After a careful consideration of the legal background on Sentencing for the offence of **Rape**, I now have to decide a starting point for your sentence. This court prefers to have **08 years imprisonment** as the starting point, though at the lower range of the tariff, as the court wishes to elaborate the aggravating background of the offending in detail.

10. The learned State Counsel submitted a comprehensive **Sentencing Submission** along with the **Victim Impact Assessment Report**. The learned Counsel for the defense filed his submissions in **Mitigation**. The **Victim Impact Assessment Report** clearly reflects the emotional and psychological effects to the victim over the alleged sexual acts.

11. As it was literally established in court in the course of the trial and correctly pointed out by the State in their Sentencing submissions, you had abused the authority of your position as the curator of the girl’s hostel and the Bible teacher of their school to sexually molest the complainant. Making things worse, you were a member of the school counseling team as well. This demonstrates the background of **authority you exercised** within the circle of hearing impaired and mute girls. You not only misused that authority but willingly molested the complainant at your convenience. I **add 03 years** imprisonment for this aggravating behavior of yours.

12. The evidence of the complainant, as described in paragraph 05 of this sentence, clearly shows how you manipulated the sequence of events to achieve your sexual desires. You made **false and fraudulent representations to the complainant about the nature and the purpose of the sexual acts** you intended to commit and made her convinced what you said was genuine and true. Ms. V.S. being a grown up girl over 16 years at the time of the incidents and been in this hostel for almost 12 years, going home only for short periods during the school holidays, would have got tempted with your ‘soft approach’ towards her. This is where you had breached the **‘trust’** that an ordinary girl would place on a teacher, especially her Bible teacher. You had attempted and you were successful in awakening the youth of the complainant by all your false and fraudulent interpretations over sexual intercourse and in doing so, you just bargained the trust she had to you as a Bible teacher. This aspect is clearly visible when she called you as ‘DADDY’ and you told her “not to get afraid as I’m your father and you are my daughter”. For this aggravating factor, I **add another 03 years** to your starting point.

13. It is plainly visible how **opportunistic** you are in committing these sexual acts. The hostel was occupied mainly by hearing impaired and mute set of girls, including your wife, except your children. You maximized that environment to achieve your perverse behavior. On top of that the vulnerability of the complainant, being a hearing impaired and mute girl who has come from a rural village to secure a better life with education was made worse by your acts of opportunity. You had conveniently forgotten that your elder daughter was also in the same age of the complainant at the time of these incidents. You simply tried to find shelter and justify this opportunistic approach towards the victim by saying that you were not permitted to take leave from work for a long time, not even to visit your sickly father and your physical relationship with your wife was not that healthy. This is surely an aggravating factor and I **add 02 years** for the same to your starting point.
14. Apart from your opportunistic conduct, the acts were very well **pre-planned** to take calculated risks. Every time you made use of the complainant, you planned it in such a way that nobody else sees you in action. That preplanning could not be to safeguard the chastity of the complainant, but, purely to maintain your image as the Bible teacher of the school and to be a good husband and a father. This was evident when you showed some letters given to you by a 'girl' in the hostel (it was not established who exactly it was) to your wife, whilst molesting the complainant. This aggravating factor will attract another **01 year** to the starting point. Over a **period of time**, nearly for 02 months, you had repeated the sexual acts for over 06 to 08 times with the complainant. The continuance of the abuse of the complainant will attract another **01 year** to the starting point.
15. Finally, you showed **no remorse** to what you did to a hearing impaired and a mute girl, who was in your immediate custody. That is why you made her to undergo the same mental trauma by recalling the bitter experiences from the witness box. You had the audacity to tell that you commit adultery, but not rape and though it is morally wrong, not wrong before the law. Therefore, there is no point of stating in your mitigation submissions that you know the incident was wrong and you are sincerely sorry for that. Lack of remorse, being an aggravating factor, will **add another 01 year** to your starting point. The interim sentence of you will now remain at **19 years imprisonment**.
16. In **Mitigation**, you claim that you are 38 years of age and having three children, who are 17 years, 15 years and 09 years of age by now. Their livelihood solely depends on you. You have not applied any violence towards the victim nor used any weapon. You are a first offender with a previous good character. You have co-operated with the police from the very beginning. According to your analysis, the victim has also contributed to this offence by not informing this to any body and left you at the first opportunity. If you are been incarcerated, the income of the family will be obliterated and the effect on the family will be disastrous. Finally, you are asking for a minimum sentence ranging from 0 to 10 years as the maximum sentence for the offence of rape is 10 years imprisonment.

(This is a total misdirection as compared to the law stated in paragraphs 06 and 07.) Apart from the fact that you are a first offender with a clean record I see nothing in the mitigation submission to award you any concession. I decide to **reduce 03 years** out of the interim period of imprisonment for that mitigatory ground. **Your final sentence now stands as 16 years imprisonment.** I order that you to be served a minimum term of **14 years** before being eligible for **parole**.

17. Finally, I must state that the sentence that you are going to receive for this charge of rape is exceeding the tariff limit already in existence. Nevertheless, this court is of the firm view that whatever the sentence you are going to get, must reflect the aggravating back ground of which you committed the acts. Therefore it is inevitable the final sentence to exceed the existing tariff. Your sentence should not only reflect your punishment for what you had done or the court and the community denounce the commission of such offences. Your sentence should contain a strong message to deter offenders or other persons from committing offences of this nature in view of protecting the ordinary members of the society.
18. No body in a civilized society asks or deserves to be raped. Acts of this nature remind us once again that irrespective of the age or mental and physical impairments of the girls or women, they can be victims of sexual violence. Nobody will be able to justify or offer any valid or acceptable explanation for committing the offence of rape. The responsibility entirely lies on the perpetrator and he should face the aftermath of the insult that he caused to the womanhood at this juncture of sentencing.
19. You have 30 days to Appeal to the Court of Appeal.

Janaka Bandara
JUDGE

At Suva
31st July 2013

Office of the Director of Prosecutions for the State
Nawaikula Esq. for the Accused