

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 102 OF 2013S

STATE

VS

TUVITA RAQILI

**Counsels : Ms. A. Vavadakua for State
Ms. N. Nawasaitoga for Accused**

Hearings : 10 and 12 February, 2014

Summing Up : 13 February, 2014

Judgment : 13 February, 2014

Sentencing : 14 February, 2014

SENTENCE

1. After a three days trial, the three assessors found you guilty on the following information, the court agreed with them and convicted you accordingly:

Statement of Offence

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

Particulars of Offence

TUVITA RAQILI on the 16 day of February 2013, at Caubati, in the Central Division, had carnal knowledge of **A. L.**, without her consent.

2. The facts were as follows. On 16 February 2013, at about 3 am, the complainant (26 years) and her defacto husband (27 years) returned home from the nightclub. It was a Saturday. They had been drinking liquor and partying with friends. Their home was at Caubati. Because they were exhausted, they immediately went to sleep in their bedroom.
3. The accused, aged 39 years, was the complainant's husband's uncle. He was also living in the same flat with the couple. He returned home at 4 am on 16 February 2013, after drinking at a nightclub. He saw the complainant and her husband sleeping in the bedroom. He went to the complainant, and raped her while she was asleep. The complainant awoke to find the accused having sexual intercourse with her, without her consent. He knew she was not consenting to sex, as he blocked her mouth with a hand, to avoid her raising the alarm.
4. As had been repeatedly said by the courts before, "rape" is the worst form of sexual violation. It robs a person of her or his dignity. It seriously violates the person's human rights. Consequently, the law prescribes a maximum punishment of life imprisonment. However, previous case laws had set the tariff between 7 to 16 years imprisonment. The actual sentence will depend on the mitigating and aggravating factors.
5. In this case, the aggravating factors were as follows:
 - (i) Breach of Trust. The complainant's defacto husband was the accused's nephew. As such, he stands in a position of trust to him. By raping the complainant, he not only breached the complainant's trust, he also breach the trust his nephew had in him;
 - (ii) By offending against the complainant, he showed utter disregard to the complainant's right as a human being, and her right to a peaceful life free from unwanted intrusion.

- 6 The mitigating factors were as follows:
- (i) At the age of 39 years, this is your first offence;
 - (ii) You had been remanded in custody for approximately one year.
- 7 I start with a sentence of 7 years imprisonment. I add 3 years for the aggravating factors, making a total of 10 years imprisonment. For the mitigating factors, I deduct 3 years, leaving a balance of 7 years imprisonment.
- 8 For raping the complainant on 16 February 2013, I sentence you, Tuvita Raqili, to 7 years imprisonment, with a non-parole period of 5 years, effective forthwith.
- 9 The name of the complainant is permanently suppressed to protect her privacy.

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JUDGE

Solicitor for State : **Office of the Director of Public Prosecutions, Suva.**
Solicitor for Accused : **Legal Aid Commission, Suva.**