

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NOS. HAM 130, 135, 139, 142, 188 AND 189 OF 2014S

BETWEEN

1. JOVECI RABUTORO
2. SEREVI DEGEI
3. LEDUA RARAWA
4. ETONIA VOSA

APPLICANTS

AND

THE STATE

RESPONDENT

Counsels : Mr. S. Waqainabete for all Applicants

Mr. T. Qalinauci for Respondent

Hearings : 15th September and 16 December, 2014

Rulings : 3 November and 24 December, 2014

RULING AND WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. 205 of 2014, all the applicants (accuseds) are facing the following information :

COUNT ONE

Statement of Offence

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

Particulars of Offence

JOVECI RABUTORO on the 26th day of June, 2014 at Ritz Nightclub, Suva in the Central Division, had carnal knowledge of E.B.T. without her consent.

COUNT TWO

Statement of Offence

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

Particulars of Offence

SEREVI DEGEI on the 26th day of June, 2014 at Ritz Nightclub, Suva in the Central Division, had carnal knowledge of E.B.T. without her consent.

COUNT THREE

Statement of Offence

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

Particulars of Offence

LEDUA RARAWA on the 26th day of June, 2014 at Ritz Nightclub, Suva in the Central Division had carnal knowledge of E.B.T. without her consent.

COUNT FOUR

Statement of Offence

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

Particulars of Offence

ETONIA VOSA on the 26th day June, 2014 at Ritz Nightclub, Suva in the Central Division had carnal knowledge of E.B.T. without her consent.

2. The applicants first appeared in the High Court on 11 July, 2014 and had been remanded in custody since then. So, they had been in custody for approximately 5 months. Joveci Rabutoro (Accused No. 1) had made two bail applications (Miscellaneous Case Nos. 142 and 189 of 2014). Serevi Degei (Accused No.2) had made one bail application (Miscellaneous Case No. 139 of 2014). Ledua Rarawa (Accused No.3) had made two bail applications (Miscellaneous Case Nos. 130 and 188 of 2014). Etonia Vosa (Accused No.4) had made one bail application (Miscellaneous Case No. 135 of 2014). Because the accuseds are facing the same information, I will deal with their applications together.
3. In Miscellaneous Case Nos. 130, 135, 139 and 142 of 2014, I heard the bail application on 15 September 2014, and on 3 November, 2014, I ruled against their bail applications. In other words, I denied their bail application. I said I would give my written reasons later. Before giving my written reasons, Accused No. 1 and 3 made a fresh bail application on 16 December 2014 ie. Miscellaneous Case Nos. 188 and 189 of 2014. I said, I would rule on 24 December 2014, and will also give my reasons. Below are my reasons.
4. It is well settled that every accused persons had a right to bail pending trial, unless the interest of justice requires otherwise. The test for the grant of bail is whether or not the accused will turn up on the date arranged, to take his trial. In deciding the above, the Court is duty bound to consider the factors mentioned in section 19 of the Bail Act 2002.

(a) Factors No. 1 : The Likelihood of the Accused Surrender to Custody:

Accused No. 1 : Joveci Rabutoro :

5. You are 32 years old, single with no children. You've been working as a bouncer at the Ritz Nightclub for 4 years. You reached Form 5 Level at Sila Central Secondary School. According to the prosecution, they have a strong case against you. Although you denied the allegation when cautioned interviewed, this rape complainant positively identified you in a police I.D. parade 4 or 5 days after the alleged rape. If found guilty after trial, you face a possible prison sentence of 14 years imprisonment and up. Your chances of bail under this head, appears slim.

Accused No. 2 : Serevi Degei :

6. You are 36 years old, single with no children. You've been working as a bouncer at the Ritz Nightclub for 2 years. You reached Form 4 Level education at Tailevu North Secondary School. According to the prosecution, they have a strong case against you. Although you denied the allegation when cautioned interviewed by police, the rape complainant and other witnesses positively identified you in a police I.D. parade 4 or 5 days after the alleged rape. If found guilty after trial, you face a possible prison sentence of 14 years imprisonment and up. Your chances of bail under this head, appear slim.

Accused No. 3 : Ledua Rarawa :

7. You are 26 years old, single with no children. You were a bouncer at the Ritz Nightclub on the day of the incident. According to the prosecution, they have a strong case against you. Although you denied this rape allegation, you were identified by this complainant in a police I.D. parade as one of the men who allegedly raped her, at the time. This I.D. parade was done 4 to 5 days after the alleged incident. If found guilty after trial, you faced a possible prison sentence of 14 years imprisonment and up. Under this head, your chances of bail are slim.

Accused No. 4 : Etonia Vosa :

8. You are 42 years old, married with 3 children. You worked at the Ritz Nightclub as a cleaner, waiter and bouncer. You reached Class 2 education. According to the prosecution, they have a strong case against you. Although you denied the rape allegation when cautioned interviewed by the police, the prosecution said they had witnesses who saw you committing the alleged crime, at the material time. If found guilty after trial, you face a possible prison sentence of 14 years imprisonment and up. Under this head, your chances of bail are slim.

(b) Factor No. 2 : The Interests of the Accuseds' Persons :

9. I will deal with all accuseds together under this heading. The trial of the accuseds had been set for 1 week from 30 November to 4 December 2015. It is approximately 11 to 12 months away. The accused had been in custody for approximately 5 months. So, when this trial starts, they would

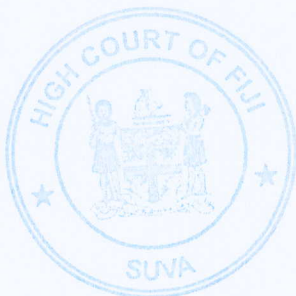
have been in custody for 1 year 5 months. However, the Court is empowered to remand people for 2 years prior to trial, if the interest of justice so requires. If found guilty after trial, time spend in custody while on remand will be deducted from the final sentence. All the accuseds are represented by legal aid counsels, and they can visit them in custody to prepare their defence, and take instructions. They can enjoy the new remand facilities. They are not incapacitated. There does not appear to be any need for them to be at liberty for any other lawful purposes. Under this head, the accuseds' chance of bail are slim.

(c) Factor No. 3 : The Public Interest and the Protection of the Community :

10. Under this head, I will deal with all the accuseds together. The allegation against the accuseds are very very serious. They allegedly gang-raped a patron to the Ritz Nightclub on 26 June 2014. They were acting as bouncers at the time, and thus were in a position of trust to protect and look after customers who visit the nightclub. However, they allegedly breached that trust, and allegedly committed rape against a patron/customer. Although the accuseds are presumed innocent until proven guilty beyond a reasonable doubt in a Court of Law, in my view, it is in the public interest and the protection of the community that they be remanded in custody until further orders of the Court. Under this head, the accuseds' chances of bail are slim.

(d) Conclusion :

11. It was for the above reasons that I denied all the accuseds' bail applications previously and today. All the applicants (accuseds) are remanded in custody, until further orders of the Court.




Salesi Temo
JUDGE

Solicitor for Applicants : **Legal Aid Commission, Suva**
Solicitor for Respondent : **Office of the Director of Public Prosecutions, Suva**