

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 035 OF 2015LAB

STATE

VS

NEMANI MATAKI

Counsels : Ms. A. Vavadakua for State
Mr. A. Paka for Accused

Hearings : 13 and 14 December, 2016

Sentencing : 15 December, 2016

SENTENCE

1. On 13 December, 2016, in the presence of his counsel, the following information was put to the accused:

FIRST COUNT
Statement of Offence

ASSAULT WITH INTENT TO COMMIT RAPE: Contrary to section 209 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

NEMANI MATAKI on the 11th day of June 2015, in Savusavu, in the Northern Division, assaulted **S.D.**, with intention of raping her.

SECOND COUNT
(REPRESENTATIVE)
Statement of Offence

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

Particulars of Offence

NEMANI MATAKI on the 11th day of June 2015, in Savusavu, in the Northern Division, had carnal knowledge of **S.D.**, without her consent.

THIRD COUNT
Statement of Offence

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

Particulars of Offence

NEMANI MATAKI on the 12th day of June 2015, in Savusavu, in the Northern Division, had carnal knowledge of **S.D.**, without her consent.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

NEMANI MATAKI on the 13th day of June 2015, in Savusavu, in the Northern Division, had carnal knowledge of **S.D.**, without her consent.

FIFTH COUNT

Statement of Offence

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

Particulars of Offence

NEMANI MATAKI on the 14th day of June 2015, in Savusavu, in the Northern Division, had carnal knowledge of **S.D.**, without her consent.

SIXTH COUNT

(REPRESENTATIVE)

Statement of Offence

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

Particulars of Offence

NEMANI MATAKI on the 15th day of June 2015, in Savusavu, in the Northern Division, had carnal knowledge of **S.D.**, without her consent.

SEVENTH COUNT

Statement of Offence

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

Particulars of Offence

NEMANI MATAKI on the 16th day of June 2015, in Savusavu, in the Northern Division, had carnal knowledge of **S.D.**, without her consent.

2. He said, he understood the charges. He then pleaded guilty to all the charges. The court asked him whether or not anyone pressured or forced him to plead guilty to the same. He said, he pleaded guilty voluntarily and no-one pressured or forced him to plead guilty to the charges. The matter was then adjourned to 14 December 2016 for the prosecution to prepare their summary of facts, antecedent report, victim impact report, previous convictions of the accused and their sentence submission. The defence also needed time to prepare their plea in mitigation.

3. On 14 December 2016, the prosecution read their summary of facts in court. They were as follows. Between 11 to 16 June 2015, the female complainant was 20 years old. The accused was 48 years old. The complainant was the accused's biological daughter. The complainant, at the time, was staying with an uncle and his family, at a village in Savusavu. On 11 June 2015, her uncle sent the complainant and her cousin to deliver invitation letters to members of the village. It was approximately 7pm at the time.

4. Outside her uncle's house, was her father, the accused. The accused had a knife with him. He came to the complainant, put the knife to her neck and forcefully dragged her to the bushes by holding her T-shirt. The accused forced the complainant to walk for one hour to a farm house in Vatukaca. He did the above with the intention of raping her (count no. 1). At the farm house, the accused forcefully had sex with the complainant without her consent, and he knew she was not consenting to the same at the time (count no. 2).
5. On 12 June 2015, at about 5am, the accused took the complainant to another spot away from the farm house. He again had sex with the complainant without her consent, and he knew she was not consenting to the same at the time (count no. 3). At 5pm the same day, they returned to the farm house. On 13 June 2015, in the morning, the accused again had sexual intercourse with the complainant without her consent, and he knew she was not consenting to the same at the time (count no. 4). The complainant feared for her life and could not resist the accused anymore. On 14 June 2015, the accused again had sexual intercourse with the complainant without her consent, and he knew she was not consenting to the same, at the time (count no. 5). On the morning of 15 June 2015, the accused repeated the above episode to the complainant and the accused was much stronger than her (count no. 6).
6. On the morning of 16 June 2015, the accused again had sexual intercourse with the complainant without her consent, and he knew at the time that she was not consenting to the same (count no. 7). At 11am on the same day, Pita Tuinadau came to his farm house. He saw the accused and the complainant. He shared some Bible verses with the accused, and they later returned to the village with the complainant. The matter had been reported to police. The accused was later charged for the complainant's rape at Savusavu Police Station.
7. At the end of the prosecution presenting their summary of facts, the court checked with defence counsel on whether or not the accused had admitted all the elements of the offences contained in the prosecution's summary of facts. Defence counsel, on behalf of the accused, said they admitted the prosecution's summary of facts and admitted all the elements of the offences contained in the information. On that basis, the court found the accused guilty as charged on all counts and convicted him accordingly on all counts.

8. As I have said in *State v Poate Rainima*, Criminal Case No. HAC 034 of 2011S, High Court, Suva, "Rape" is always a serious offence. It carries a maximum sentence of life imprisonment. It is the worst form of sexual assault on an individual. It is an unwanted invasion of a person's body without that person's consent. Consequently, the courts take a dim view of it, and have set a tariff of 7 to 15 years imprisonment. The worse form of rape is reserved for the higher end of the tariff. 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 final sentence will depend on the presence or otherwise of mitigating and/or aggravating factors.
9. "Assault with intent to commit rape" carried a maximum sentence of 10 years imprisonment (section 209 of the Crimes Decree 2009).
10. The aggravating factors in this cause were as follows:
- (i) Serious Breach of Parental Trust. The complainant was your 20 year old daughter. You are her father. A father-daughter relationship is a sacred one. The father is supposed to be a pillar of strength for his daughter. He is supposed to counsel her, guide her and encourage her to become a confident and useful member of society. However, you did the unthinkable. You abused her sexually. You put a knife to her neck, dragged her away to a distant farm house, and repeatedly raped her therein and near to it. You will have to be given a custodial sentence, to teach you what is expected of a father. You should not complain because you have done so much harm to your daughter.
 - (ii) You kept your daughter in custody for about a week while you offended against her. You bullied her during this time, and you had no regard whatsoever to her right to move around freely.
 - (iii) The violence used in committing the offences. You first put a knife to her neck and dragged her to the bushes with intent to rape her. You then forced her on a 1 hour march to a distant farm house. You threatened to hurt her severely if she resisted you. You are

stronger than her and she feared for her life. You have certainly caused great hardship to the complainant while she was with you.

- (iv) You have caused physical and emotional harm to your daughter. You hurt her physically while you were offending against her. You have shattered her confidence as a person. Only time will heal the emotional scar you have caused this young person.

11. The mitigating factors are as follows:

- (i) Although you pleaded guilty 1 year 5 months 4 days after first call in the High Court and on the first day set for trial, you nevertheless saved the court's time and the need for the complainant to relieve her ordeal in the courtroom by giving evidence;
- (ii) You had been remanded in custody from 19 June 2015, that is, approximately 1 ½ years ago.
- (iii) You appear to be remorseful.

12. I will start with the rape offence in count no. 2. On count no. 2, I start with a sentence of 13 years imprisonment. I add 6 years for the aggravating factors, making a total of 19 years imprisonment. I deduct 1 ½ years for time already served while remanded in custody, leaving a balance of 17 ½ years. I deduct 1 year for your late guilty plea, leaving a balance of 16 ½ years imprisonment. For being remorseful, I deduct another 6 months, leaving a balance of 16 year imprisonment.

13. I repeat the above process and sentence for counts no. 3, 4, 5, 6 and 7.

14. On count no. 1, I sentence you to 4 years imprisonment.

15. The summary of your sentences are as follows:

- | | | | | | |
|-------|-------------|---|---------------------------------------|---|-----------------------|
| (i) | Count no. 1 | - | Assault with intent to
commit Rape | - | 4 years imprisonment |
| (ii) | Count no. 2 | - | Rape | - | 16 years imprisonment |
| (iii) | Count no. 3 | - | Rape | - | 16 years imprisonment |
| (iv) | Count no. 4 | - | Rape | - | 16 years imprisonment |
| (v) | Count no. 5 | - | Rape | - | 16 years imprisonment |

- (vi) Count no. 6 - Rape - 16 years imprisonment
(vii) Count no. 7 - Rape - 16 years imprisonment

16. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, that is, a final total sentence of 16 years imprisonment.
17. Mr. Nemani Mataki, for committing various sexual offences against the complainant from 11 to 16 June 2015, at Savusavu in the Northern Division, I sentence you to 16 years imprisonment, with a non-parole period of 15 years imprisonment, effective forthwith.
18. The complainant's name is permanently suppressed to protect her privacy.
19. The above sentence is designed to punish you in a manner which is just, to protect the community, to deter other would-be offenders, to set pre-conditions for rehabilitation and to signify that the court and the community denounce what you did to the complainant from the 11 to 16 June 2015.
20. You have 30 days to appeal to the Court of Appeal.



Salesi Temo
JUDGE



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