

**IN THE HIGH COURT OF FIJI**

**CRIMINAL JURISDICTION**

**AT LAUTOKA**

**CRIMINAL CASE: HAC 87 OF 2015**

**BETWEEN** : STATE

**AND** : MARIKA TUBEINAVATU

**Counsel** : Ms. J. Fatiaki with Mr. T. Tuienuku for State  
Mr. M. Fesaitu for the Accused

**Date of Hearing** : 21st of March 2016  
**Date of Closing Submissions** : 22nd of March 2016  
**Date of Summing Up** : 23rd of March 2016  
**Date of Judgment** : 23rd of March 2016  
**Date of Sentence** : 24th of March 2016

**SENTENCE**


1. Mr. Marika Tubeinavatu, subsequent to the hearing and the unanimous verdict of guilt given by the three assessors, the court found you guilty for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree, and convicted accordingly. The offence of Rape carries a maximum penalty of life imprisonment.
2. It was proved at the conclusion of the hearing that you entered into the room where the victim was sleeping and got on top of her. You then removed her shorts and undergarment to a side and had a sexual intercourse by inserting your penis into her vagina.

3. This is a case of an acquaintance rape. It is a form of sexual coercion where a known person forcefully and manipulatively has sexual intercourse with the victim. This is indeed one of the worse forms of sexual offences, which infringes the victim's life, physically and emotionally.
4. The victim is a foreign national and a teenager, who came to Fiji to work as a community worker for the church. She was in an environment that was not familiar and away from her loved one. Accordingly, it appears that she was in a vulnerable position at the time of this crime was committed. You waited until every one of your family left the house. You then unleashed your disgraceful plan by raping her.
5. According to the Victim Impact Report, it was found that the victim had contracted with a sexually transmitted disease after this incident. However, the prosecution has not provided any medical evidence in order to confirm it apart from a written report made by the victim. The Victim Impact Report further reveals that the victim is still undergoing a severe psychological trauma, which has adversely affected her life.
6. Having considered the section 4 (1) of the sentencing and penalties decree, I find that the main purpose of this sentencing must be founded on the principle of deterrence. It is a responsibility of the court, to demonstrate the grave seriousness of the offences of this nature to the public in sentencing. I am mindful of the principle of rehabilitation; however, the court must give priority to deter the offenders and other persons from committing offences of this nature, while preserving the principle of rehabilitation.
7. Tariff for the offence of rape ranges from 7 years to 15 years (**State v Marawa[2004] FJHC 338; HAC 0016T.2003S (23 April 2004), The State v Navauniani Koroi(unreported) Cr. App Case No. HAA0050.2002S, The State v Samu Seru(unreported) Suva Crim. Case No. HAC0021.2002S, State v Oteti Sivonatoto, Crim Case No 207 of 2011)**)
8. Having considered the level of harm on the victim and the amount of culpability as discussed above, I select nine (9) years as the starting point for your sentencing.
9. You breached the trust reposed in you by the victim. She was nineteen (19) years old and you were thirty (30) years old at that time. Having committed this offence, you told her

not to tell anyone of this incident. You committed this heinous crime on the victim at the place she considered as safe and friendly for her to stay in Fiji. She was sick and was sleeping at that time of this crime was committed. I consider these factors as aggravating circumstances of this offending.

10. You are 32 years old and farmer. You have spent five (5) months in remand prior to this sentencing. I consider these facts for your mitigation.
11. Having considered the aggravating factors discussed above, I increase two (2) years and reach an interim imprisonment of eleven (11) years. In view of the mitigating factors and the time that you have spent in prison, I reduce one year and reach to a final sentence of ten (10) years of imprisonment.
12. Having considered the main purpose of this sentence which is principle of deterrence and the principle of rehabilitation, I find 7 years of non-parole period would appropriately serve the said purpose pursuant to Section 18 (1) of the Sentencing and Penalties Decree.
13. Accordingly, I sentence you ten (10) years of imprisonment for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. Furthermore, I order that you are not eligible for parole for a period of 7 years.
14. Thirty (30) day for the appeal to the Fiji Court of Appeal.



  
**R. D. R. Thushara Rajasinghe**  
**Judge**

**At Lautoka**  
**24th of March 2016**

**Solicitors : Office of the Director of Public Prosecutions**  
**Office of Legal Aid Commission**