

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 148 OF 2013

BETWEEN : STATE

AND : RATU LUKE SOVA

Counsel : Ms. S. Kiran for State
Ms. P. Chand for the Accused

Date of Hearing : 18th of May 2016

Date of Closing Submissions : 19th of May 2016

Date of Summing Up : 19th of May 2016

Date of Judgment : 23rd of May 2016

Date of Sentence : 25th of May 2016

SENTENCE

1. Mr. Ratu Luke Sova, you have been convicted by this court for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Decree, which carries a maximum sentence of life imprisonment.
2. It was proved at the hearing that you met the victim at a carnival on the 20th of June 2013. You were introduced to her by one of her friends, namely Seini. You

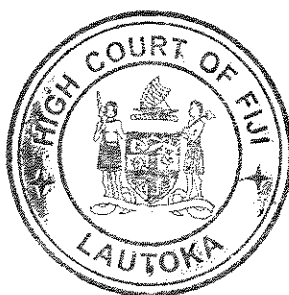
were with your friend Osea. After introducing each other, you left the carnival and went for a walk along the tramline with three of them. Having walked for a while, Osea and Seini turned to the other side, leaving you and the victim alone. She then sat near a rain tree, where the victim wanted to sit and talk. However, you wanted to go into the bush. You then pulled her from her hand and pushed her into the bush near the cemetery. Both of you then sat on a tree trunk, where you tried to persuade the victim to have sexual intercourse. She refused it. You then forcefully had a sexual intercourse with her without her consent.

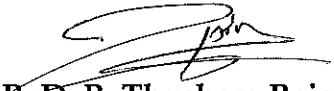
3. Rape is a worse form of sexual assault, which infringed the life of the victim, both physically and psychologically. This is a case of an acquaintance rape, which is commonly known as "date rape". It is a form of sexual coercion where a known person forcefully have sexual intercourse with the victim. You met her first time on that night. She was sixteen years old at that time. She agreed to go for a walk with you as she wanted to have a date with you. However, it was proved during the hearing that she did not want to have sexual intercourse with you though she engaged with erotic physical contact with you. She has specifically stated that she is not consenting for such sexual intercourse, when you asked her three times.
4. Having considered the nature of this offence, I now turn my attention to consider the purpose of this sentence. The main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature.

5. Hon. Chief Justice Gates in Anand Abhay Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014) held that the tariff for rape of a child is between 10 -16 years' imprisonment period.
6. There is no specific finding of any psychological and physical impact on the victim due to this incident. You have not inflicted any adverse form of violence on the victim. However, the court must give a real consideration to the overall circumstance of the incident and how it has harmfully affected the victim in order to consider the level of harm and culpability of this offending. I accordingly select 12 years of imprisonment as a starting point.
7. You found a moment to be with a girl that you like at a remote, isolated location in the night. You use this moment opportunistically to satisfy your lustful desire by engaging a forceful sexual intercourse with the victim. By doing that you breached the trust that she had for you. I consider these factors as aggravating circumstances of this crime.
8. You are a 21 years old young person. You have no adverse record of previous convictions. The witness who gave evidence in your mitigation stated that you are a responsible young person in your community, engaging with community activities and providing leadership. You are a rugby player, who plays for your regional rugby club. It is unfortunate that a young person like you with a bright future ahead, have fallen into a moment of lustful desire and committed a crime of this nature. You have spent two months in remand custody prior to this sentencing. I consider these reasons as mitigating circumstances.

9. In view of the above discussed aggravating circumstances, I increased one (1) year in order to reach thirteen (13) years of interim imprisonment period. Having considered the mitigating factors, I reduce three (3) years. Your final sentence is now ten (10) years of imprisonment.
10. Having considered your age and progressive record of your community and social involvements, I find the court must consider the possibilities of rehabilitation, while preserving the main sentencing purpose of deterrence and protection of community. I accordingly find five years of non-parole period would serve both the purposes of deference and rehabilitation.
11. Accordingly, I sentence you for a period of ten years (10) of imprisonment for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Degree. Furthermore, I order that you are not eligible for parole for a period of five (5) years.
12. Thirty (30) days to appeal to the Fiji Court of Appeal.

At Lautoka
25th of May 2016




R. D. R. Thushara Rajasinghe
Judge

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