

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC. 306 OF 2014

STATE

V

EPELI WAQANITABUA KELEI

Counsel : Ms. S. Puamau for State
Ms. T. Kean for the Accused

Dates of Hearing : 08th & 09th June 2016

Date of Summing Up: 09th June 2016

Date of Judgment : 10th June 2016

Date of Sentence : 13th June 2016

SENTENCE

1. Epelel Waqanitabua Kelel, you stand convicted for one count of rape contrary to section 207(1) of the Crimes Decree 2009 ("Crimes decree") and one count of indecent assault contrary to section 212(1) of the Crimes Decree.
2. In brief, early morning on 13th November 2014, you raped your cousin sister while she was asleep on her bed with her one year old daughter after celebrating her 21st birthday the previous night. A short while before that, you kissed her when she was on her way to her bedroom from the bathroom. You were one of the invitee's to her birthday party who stayed overnight.

3. The maximum sentence for the offence of rape is imprisonment for life. It is settled that the sentencing tariff for rape of an adult victim is a term of imprisonment between 7 years and 15 years. (*State v Naicker* [2015] FJHC 537; HAC279.2013)
4. The offence of indecent assault under section 212(1) of the Crimes Decree carries a maximum sentence of 5 years imprisonment. Tariff for the offence of indecent assault is 12 months imprisonment to 4 years. (*Rokota v. State* [2002] FJHC 168; HAA0068J.2002S)
5. Section 17 of the Sentencing and Penalties Decree 2009 (“Sentencing and Penalties Decree”), reads thus;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

6. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Decree, I consider it appropriate to impose an aggregate sentence of imprisonment for the said offences.
7. According to the victim impact statement, the victim has suffered a substantial emotional and psychological impact. To be raped by a cousin brother at her own house, on her own bed, after her 21st birthday party is not something a human being can easily live with.
8. I consider the following as aggravating factors;
 - a) you are victim’s cousin brother. There is a breach of trust; and
 - b) you raped her while she was in a vulnerable state where she was asleep after celebrating her 21st birthday.

9. Your counsel submits the following as your mitigating circumstances;
- a) you are a first offender;
 - b) you are 31 years old and married;
 - c) you are the sole breadwinner of your family and supports your mother;
 - d) you have been assisting the members of your community; and
 - e) you are remorseful.
10. I take 7 years imprisonment as the starting point of your aggregate sentence. Considering the aforementioned aggravating factors, I add 5 years. Now your sentence is 12 years imprisonment.
11. I deduct 4 years of your sentence considering the above mitigating factors.
12. I hereby sentence you for an imprisonment term of 08 years. I order that you are not eligible to be released on parole until you serve 06 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree 2009.
13. Section 24 of the Sentencing and the Penalties Decree reads thus;
- “If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*
14. I note that you were arrested for this matter on 16th November 2014 and you were granted bail on 18th December 2014. You spent four days in remand pending your sentence. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 1 month and 6 days.

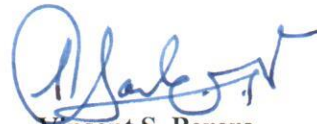
15. In the result, you are sentenced to 08 years imprisonment with a non-parole period of 06 years. Considering the time spent in remand, the time remaining to be served is as follows;

Head Sentence – 07 years, 11 months and 24 days

Non-parole period – 05 years, 11 months and 24 days

16. 30 days to appeal to the Court of Appeal.




Vincent S. Perera
JUDGE

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