

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 37 OF 2013

BETWEEN : STATE

AND : SAMISONI BAUKARI

Counsel : Mr. Niudamu. J for State
Mr. M. Fesaitu for the Accused

Date of Hearing : 5th of July 2016
Date of Closing Submissions : 6th of July 2016
Date of Summing Up : 6th of July 2016
Date of Judgment : 8th of July 2016
Date of Sentence : 11th of July 2016

SENTENCE

1. Mr. Samisoni Baukari, you have been found guilty and convicted 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 conclusion of the hearing, that you came to the victim while she was sleeping in her bed room in the early morning of 15th of February 2013 and forcefully had sexual intercourse with the victim without her consent. The victim is the wife of your nephew.
3. This is a case of an acquaintance rape. It is a form of sexual coercion where a known family member forcefully 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. Offences of this nature have been increasing with alarming prevalence and has become a dismaying social concern. Committing offences of this nature to women in the domestic environment by known persons has posed a perilous risk to the smooth functioning of the society with dignity and security.

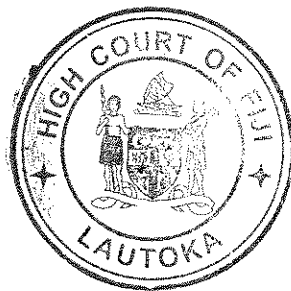
4. Having considered the serious nature of this offence and the Section 4 (1) of the Sentencing and Penalties Decree, the main purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the court to demonstrate the grave seriousness of the offences of this nature 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.
5. 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)
6. There is no specific finding of any psychological impact on the victim due to this incident. You have punched the victim on her thighs before you forcefully removed her undergarments. You approached her while she was sleeping. The room was dark and had no light, making the victim vulnerable to react to your approach. In view of the above discuss seriousness of the offence, and the level of harm and culpability I select ten (10) years as the starting point.


7. You are related to the victim as her uncle. Her husband left the victim with you expecting that you will look after her while he was at work. Instead of preserving the trust and respect the victim and her husband had for you, you opted to take advantage of the opportunity by committing this offence. Hence, I find that you have breached the trust reposed in you by the victim and her husband. This is an opportunistic crime. You found the vulnerability of the victim as she was alone in the house. Knowing that she was vulnerable you committed this crime. I find these grounds as aggravating circumstances of this offence.
8. You are 32 years old and married with three children. You are a first offender. You are the sole bread winner of your family. You have spent nearly six months in remand custody prior to this sentence. I consider these factors as mitigating circumstances of this case.
9. Having considered the above discussed aggravating circumstances, I increase two years (2) to reach interim period of twelve (12) years of imprisonment. I reduce three (3) years for the mitigating factors as discussed above. Your sentence now reaches to a period of 9 years imprisonment. I further reduce 6 months for the time that you spent in remand custody prior to this sentence making the final sentence as eight (8) years and six (6) months of imprisonment.
10. Having considered your age and previous good character, it is my opinion that the court must consider the possibilities of rehabilitation, while preserving the main sentencing purpose of deterrence and protection of community. I accordingly find seven (7) years of non-parole period would serve the both purposes of deterrence and rehabilitation.

11. Accordingly, I sentence you for a period of eight years (8) and six (6) months 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 seven (7) years.

12. Since this incident involves with domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Decree. I accordingly make a permanent domestic violence restraining order against the accused with standard non molestation conditions and no contact conditions pursuant to section 24 and 28 of the Domestic Violence Decree. The above domestic violence restraining order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of section 77 of the Domestic Violence Decree.

13. Thirty (30) days to appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
11th of July 2016

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