

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 107 OF 2013

STATE

V

TUTUNISAU CAUCAU

Counsel: Ms. R. Uce for the State
Ms. S. Dunn for the Accused

Date of Judgment : 07th July, 2017

Date of Sentence : 14th July, 2017

SENTENCE

[1] Mr. Caucau, on the 7th July 2017, you were found guilty on following counts by three assessors after a full defended trial.

COUNT 1

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) of the Crimes Decree, 2009.

Particulars of Offence

TUTUNISAU CAUCAU, on the 27th day of March 2013, at Lautoka in the Western Division, inserted his finger into the vagina of **THERESE MARI CHARLENE**, without her consent.

COUNT 2

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) of the Crimes Decree, 2009.

Particulars of Offence

TUTUNISAU CAUCAU, on the 28th day of March 2013, at Lautoka in the Western Division, inserted his finger into the vagina of **THERESE MARI CHARLENE**, without her consent.

COUNT 3

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

TUTUNISAU CAUCAU, on the 28th day of March 2013, at Lautoka in the Western Division, unlawfully and indecently touched the vagina of **THERESE MARI CHARLENE**, without her consent.

COUNT 4

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

TUTUNISAU CAUCAU, on the 28th day of March 2013, at Lautoka in the Western Division, unlawfully and indecently kissed the breast of **THERESE MARI CHARLENE**, without her consent.

COUNT 5
Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree, 2009.

Particulars of Offence

TUTUNISAU CAUCAU, on the 28th day of March 2013, at Lautoka in the Western Division, had unlawful carnal knowledge of **THERESE MARI CHARLENE**, without her consent.

COUNT 6
Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) of the Crimes Decree, 2009.

Particulars of Offence

TUTUNISAU CAUCAU, on the 28th day of March 2013, at Lautoka in the Western Division, inserted his finger into the vagina of **THERESE MARI CHARLENE**, without her consent.

- [2] The Court affirmed assessors' opinion and convicted you on all six counts. You now come before this court for sentence.
- [3] The facts of this case were that on 27th March, 2013, you came to complainant's house to massage complainant's mother who was suffering from arthritis. You then convinced complainant's mother that you should massage complainant saying that she (complainant) had 'something' with her and you can eliminate her illness by your therapy. You wanted her to be massaged in a room and asked her to lie down so that you could massage her. You massaged her abdomen for about 20 minutes, and finally put your finger inside her vagina. She started to feel uncomfortable.
- [4] On 28th March, 2013, you came to complainant's house for the continuance of your therapy. You closed the door and told complainant to take off her clothes and lie down face upwards so that you could massage her again. As she lied down, you started massaging her abdomen. In the process of massaging, you took her hand to put it in your *sulu* for her to touch your penis. Then you started kissing her breasts. She just felt uncomfortable. Then you went down to have oral sex and started licking her vagina. As she turned her head towards the bed, you

came on top of her and put your penis inside her vagina. When she pulled her face away and complained of a stomachache, you got off and put your fingers inside her vagina again.

- [5] The maximum sentence for rape is imprisonment for life.
- [6] The tariff for adult rape is well settled. The starting point for adult rape is seven years' imprisonment *Kasim v The State* (Crim App. No. AAU0021j of 1993S) and the tariff is set between 7 and 15 years' imprisonment (*State v Marawa* [2004] FJHC 338).
- [7] The maximum penalty for Indecent Assault is 5 years' imprisonment. Tariff range for Indecent Assault is between 12 months and 4 years' imprisonment. (*Ratu Penioni Rakota v The State* (2002) FJHC 168: Criminal Appeal No. HAA 0068 of 2002S) 23 August 2002, *State v Gonedau* FJHC 84 (5 March 2013).
- [8] In selecting the starting point, the Court must have regard to the objective seriousness of the offence. This offending has exploited the sanctity of medical therapy to satisfy offender's lustful demands. People in need of genuine medical therapy will be frightened to go to a therapist. Genuine therapist's profession will be in trouble. Considering the circumstances of the offending, I pick a starting point of 8 years from the lower end of the tariff for Rape counts.
- [9] **Aggravating Circumstances**
- You knew that the Complainant was separated from her husband and were aware that she was in need of a medical therapy. You were also aware that no male adult was in her house. You have exploited her vulnerability.
 - Complainant trusted you as a therapist. She allowed you to massage her in a closed room in the belief that your therapy was meant for a healing process. You breached the trust when you committed these offences in the guise of a medical therapy.
 - You disguised as a therapist and fraudulently mislead an unsuspecting woman.
 - Complainant suffered physical pain and will suffer psychology for the rest of her life. In her Victim Impact Statement she says "After

this crime, my relationship with my husband has become worse and also I don't trust males anymore. It is hard for me to communicate with males"

[10] **Mitigating Circumstances**

- You have no previous convictions for the past ten years. Therefore I consider you as a first offender.
- Your personal circumstances are such that you are 62 years' old, married and a famer by profession. You are the sole breadwinner of your family.

[11] Rape and indecent assaults are prevalent in Fiji and have to be eliminated. The offenders must be punished to denounce rape and kindred offences. A clear message must be sent to the community that no such actions will be tolerated by courts. People who disguise themselves as therapists must be punished to protect the profession and to protect innocent people who can easily be misled into this type of fraudulent therapeutic treatments.

[12] I increase your sentence for each rape count by 3 years to reflect aforementioned aggravating features bringing your interim sentence to 11 years' imprisonment. I deduct 2 years to reflect mitigating circumstances and the time spent in remand (66 days). Your final sentence for each rape count is 9 years' imprisonment.

[13] For indecent assaults, I impose a sentence of 2 years' imprisonment for each count.

[14] Having considered the totality and one transaction principles, I order that you serve all the prison terms concurrently.

[15] Having considered the decision in *Tora v State* Crim. App. No. AAU 0063 of 2011 (27 February 2015), your age and the fact that you are a first offender, I fix a non-parole period of 7 years. You are thus eligible to parole after 7 years in prison.

Summary

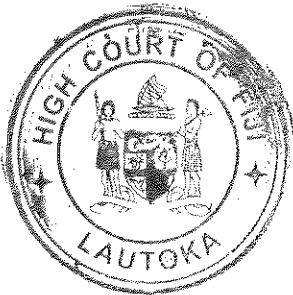
Count 1	9 years
Count 2	9 years
Count 5	9 years

Count 6 9 years
To be served concurrently to each other

Count 3 2 years
Count 4 2 years

To be served concurrently with each other and with the terms on counts 1, 2, 5 and 6.

- [16] In total you are sentenced to 9 years' imprisonment with a non-parole period of 7 years.
- [17] You have 30 days to appeal to the Court of Appeal.




Arun Aluthge
Judge

At Lautoka
14th July, 2017

Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for Accused