

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 04 of 2013

STATE

vs.

LEPANI LIKUNITOGA

Counsel: Ms. J. Fatiaki for the State
Mr. K. N. Chang with Ms. N. Mishra for the Accused

Date of Hearing: 10th and 11th December 2018

Date of Summing Up: 13th December 2018

Date of Judgment: 13th December 2018

Date of Sentence: 20th December 2018

SENTENCE

1. Mr. Lepani Likunitoga, you stand convicted for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act. Both counts carry a maximum sentence of life imprisonment. The particulars of the offences are that:

FIRST COUNT

Statement of Offence

RAPE: *Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.*

Particulars of Offence

LEPANI LIKUNITOGA on the 26th day of December 2012, at the Suva in the Central Division, raped **ADI NANISE TARAILAGI** by having carnal knowledge of the said **ADI NANISE TARAILAGI** without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) of the Crimes Act 2009.

Particulars of Offence

LEPANI LIKUNITOGA on the 26th day of December 2012, at the Suva in the Central Division, raped **ADI NANISE TARAILAGI** by penetrating the vagina of the said **ADI NANISE TARAILAGI** with his tongue without her consent.

2. It was proved at the conclusion of the hearing that you have forcefully pushed the complainant down to the floor when she was seated on the floor. You have then forcefully removed her clothes as well as yours. Having done that you inserted your tongue into the vagina of the complainant without her consent. You then penetrated into her vagina with your penis.

Purpose of the sentence

3. Rape is the most serious form of sexual exploitation. It is an outrageous invasion of a person's privacy, dignity and self-autonomy. Therefore, the court finds the offence of rape is a very serious offence. In view of the seriousness of the offence of this nature, it is my opinion that such offenders must be dealt with severe and harsh punishment. Hence, the purpose of this sentence is founded on the principle of deterrence and protection of community. Moreover, the court must demonstrate in sentencing that the offenders of this nature are socially abhorrent.

Tariff

4. The tariff for the offence of rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period.

Level of Harm and Culpability

5. The victim impact report provides the details of the emotional and psychological effect that this offence has caused to the complainant. It has adversely changed the complainant to an insecure, withdrawn, and reserved person from her usual self of outgoing socialized lady. She has been experiencing rejection and refusal from her family and relative. In view of these facts, I find the level of harm in this offence is high.
6. You have used substantial amount of force in order to execute this crime on the complainant. You have found an opportunity, where the complainant was left alone by her male companion after having consensual sexual intercourse inside the Flea Market at the early hours of the morning of 26th of December 2012. You have unleashed this sexual assault on the complainant, when she was not in a position of properly defend herself or escape from the scene. In view of these facts, I find the level of culpability in these offences is high as well.

Starting Point

7. In view of the serious nature of the offence, the purpose of the sentence, the level of harm and culpability, I find that this is an appropriate case to start from the middle of the sentencing tariff range. I accordingly select twelve (12) years as the starting point for each of these two counts.

Aggravating Facts

8. You have invited the complainant and her male companion into the Flea market and provided them carton to have sexual intercourse inside the market. It was proved that you

have had few conversations with the male companion of the complainant before he left the market. You have then approached the complainant, when she was alone, and committed this crime to her. It appears that the complainant and her male partner had trusted you when you invited them into the market. They then freely engaged in a consensual sexual intercourse. By committing this crime, you have breach and abused that trust that the complainant had in you. I consider this ground as an aggravating factor.

Mitigating Facts

9. The learned counsel for the defence submitted your family and personal background, which I do not find any mitigatory value.
10. You are a first offender therefore, you are entitled for a discount for your previous good behaviours.
11. In view of the above discussed aggravating factor, I increase one year to reach thirteen (13) years interim imprisonment. In view of your previous good character, I reduce two (2) years, reaching your final sentence as eleven (11) years imprisonment for each count.
12. Having considered the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find nine (9) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of nine (9) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence


13. Accordingly, I sentence you as follows:
 - i) **Eleven (11) years imprisonment** to the first count of rape with a non-parole period of **nine (9) years**,
 - ii) **Eleven (11) years imprisonment** to the second count with a non-parole period of **nine (9) years**.

14. Both sentences to be served concurrently.

Actual Period of The Sentence

15. You have been in remand in custody for this case for a period of nearly one (1) month and twenty (20) day as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of two (2) months as a period of imprisonment that have already been served by you.
16. Accordingly, the actual sentencing period is **ten (10) years and ten (10) months** imprisonment with non-parole period of **eight (8) years and ten (10) months**.
17. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
20th December 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.