

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 190 OF 2016

STATE

v

ANDREW MARK ROD

Counsel: Ms. R. Uce for State

**Ms. K. Vulimainadave with Ms. Manueli for
Accused**

Date of Judgment: 26th March, 2018

Date of Sentence: 4th April, 2018

SENTENCE

1. Mr. Andrew Mark Rod, you were convicted on following counts after a fully defended trial.

First Count

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ANDREW MARK ROD on the 07th day of September, 2016 at Lautoka in the Western Division, unlawfully and indecently assaulted VINAISI NIURUA.

Second Count

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ANDREW MARK ROD on the 07th day of September, 2016 at Lautoka in the Western Division, inserted his finger into the vagina of VINAISI NIURUA without her consent.

Third Count

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ANDREW MARK ROD on the 07th day of September, 2016 at Lautoka in the Western Division, inserted his penis into the vagina of VINAISI NIURUA without her consent.

2. Assessors unanimously found you not guilty on all counts. The Court rejected the opinion of Assessors and found you guilty on each count and convicted you accordingly. You now come before this Court for sentence.
3. Facts of the case in brief were that you came in a twin cab and offered a lift to the victim who was walking down to a nearby shop to buy detergent. You offered a

lift and she boarded the vehicle believing you that she will be dropped at the shop. However you did not stop at the shop and drove the vehicle to an isolated house in a remote area, against her will.

You asked her to go inside house and informed her to look for a place for her to lie down. As she entered a room, you came from the back and pushed her on the bed. You started kissing her and removed her clothes despite her protest. You moved upwards and started licking her vagina. After licking her vagina, you inserted your finger into her vagina. Then you came on top of her, and inserted your penis into her vagina without her consent.

4. The maximum penalty for Sexual Assault is 10 years' imprisonment. In State v Epeli Ratabacaca Laca, HAC 252 of 2011, Justice Paul Madigan set the tariff for the offence between 2 and 8 years imprisonment, the higher tariff being set for serious sexual assaults.
5. Having considered the Legal Guidelines for Sentencing in the United Kingdom, Justice Madigan, in Laca (supra), divided Sexual Assault offending into three (3) categories.

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

(i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

6. Licking of a vagina falls into category 2(ii) above.
7. The maximum penalty for Rape is life imprisonment.
8. The tariff for Rape of an adult is well settled. The starting point 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).
9. Rape is a serious crime. By prescribing life imprisonment for Rape, the law makers expect Courts to impose harsher punishment on rape offenders. This heinous crime is prevalent in Fiji and the offenders must be punished to denounce and to send a clear message to the community that no such actions will be tolerated by courts. Not only the offender but potential offenders must be deterred. The offender must be severely punished to ensure safety and security of all women.
10. Bearing in mind Section 11(1) of the Constitution and Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case. In the sentencing process, I base my final sentence on two Rape counts which are the most serious.
11. In selecting the starting point, the Court must have regard to the objective seriousness of the offence. In doing so, I have considered culpability and harm factors of your offending. Evidence led in trial shows that a degree of pre planning was involved in your offending. The victim was 18 years old and still schooling at the time of offence. Having considered the gravity and objective seriousness of the offence, and principles laid down in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 8 years' imprisonment as the starting point for each count of Rape.
12. I have considered following aggravating circumstances in light of the Section 4(2) of the Sentencing and Penalties Act and guidelines set out by the Chief Justice Gates in *Ram v State* [2015] 26; CAV 12.2015 (23 October 2015).

- i. The victim and her uncle are known to you. The victim trusted you when you offered a lift to a nearby shop. You breached the trust when you took her to an isolated house to commit these offences.
 - ii. The victim was 18 years old and was in a vulnerable situation when you took her to an isolated place. You exploited her vulnerability to satisfy your lustful demands, without having any regard to her health and wellbeing.
 - iii. According to the Victim Impact Statement filed by the State, Victim has suffered psychologically.
13. I have considered following mitigating circumstances that your Counsel has submitted to this Court.
 - i. You are a 30 year old father of three children. You are a mechanic earning \$ 210 per week. You are separated from your wife. I have considered the character reference from your church and your personal circumstances although they have a very little mitigatory value.
 - ii. You promise not to reoffend and seek leniency of this Court.
14. You have previous convictions and hence will not get any discount for good character. You have absconded several occasions and not cooperated with the justice system. You have not been remorseful. Therefore you will not get any discount for any of those.
15. I add 2 years to the starting point for above mentioned aggravating factors bringing the interim sentence for each Rape count to 10 years' imprisonment. I deduct 1 year for the above mentioned mitigating factors bringing the sentence for each Rape count to one of 9 years' imprisonment.
16. According to the submission filed by the State, you have been in remand approximately for 269 days. I deduct further 9 months to reflect your remand period. Now your final sentence for each rape count is 8 years and 3 months' imprisonment.

17. I select a starting point of 3 years for Sexual Assault. I add 2 years for aggravating circumstances and deduct 1 year for mitigating circumstances. Final sentence for Sexual Assault count is 4 years imprisonment.
18. You are 30 years old and your rehabilitation potential is something to be reckoned with. Considering Section 18 (1) of the Sentencing and Penalties Act, and principles enunciated in *Tora v State* [2015] FJSC 23; CAV11.2015 (22 October 2015), I impose a non-parole period of 7 years.

Summary

19. For the 1st count of Sexual Assault, you are sentenced to 4 years imprisonment.
20. For the 2nd and 3rd Counts, you are sentenced to 8 years and 3 months' imprisonment for each count.
21. You are to serve your sentences concurrent to each other.
22. You are eligible for parole after serving 7 years in prison.
23. 30 days to appeal to the Fiji Court of Appeal.

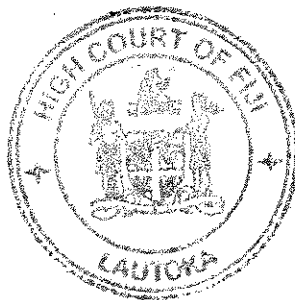


Aruna Aluthge

Judge

At Lautoka

4th April, 2018



Counsel:

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