

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA08 OF 2018

(Magistrates' Court Case No. 212 of 2017)

BETWEEN: **BEIATEUEA MOTETE**

APPELLANT

AND: **THE STATE**

RESPONDENT

Counsel: **Appellant in person**
 Mr R Kumar for the Respondent

Date of Hearing: **08 June 2018**

Date of Judgment: **08 June 2018**

JUDGMENT

- [1] This is a timely appeal against sentence only.
- [2] On 1 June 2017, the appellant was charged with attempt to rape contrary to section 208 of the Crimes Act. He elected to be tried in the Magistrates' Court. On 15 December 2017, he freely and voluntarily pleaded guilty to the charge. On 20 March 2018, he was sentenced to 2 years 4 months and 1 week imprisonment with a non-parole period of 1 year.

- [3] The facts were that the appellant entered an adult female victim's house naked and pushed her to the ground. He got on top of her and tried to pull her pants down. She resisted and screamed for help. He tried to block her mouth with his hand when she screamed. The victim's uncle and fellow villagers who were drinking kava nearby ran to her rescue. The appellant fled the scene leaving his trousers behind. The appellant smelt of liquor and was drunk when he committed the crime. The incident occurred on Rabi Island. At the time of the offence, the appellant was 21 years old, unemployed and single. He was a first time offender.
- [4] The appellant's grounds of appeal in summary are:
- (i) The starting point was too high.
 - (ii) The 1 year non-parole fails to take into account the principle of rehabilitation.
 - (iii) The sentence is harsh and excessive in all circumstances of the case.
- [5] The maximum penalty prescribed for attempt to rape is 10 years' imprisonment. The tariff is 1 – 5 years imprisonment (*Aunima v State* Cr App No HAA033 of 2001).
- [6] The aggravating factors were that the victim was attacked inside her home and that the appellant was drunk when he attacked the victim.
- [7] The mitigating factors were the appellant's guilty plea and previous good character.
- [8] The learned magistrate subsumed the aggravating factors and used 5 years as a starting point. The learned magistrate gave generous discount for the mitigating factors and reduced the sentence to 2 years and 8 months imprisonment. The sentence was further reduced to 2 years, 4 months and 1 week to reflect the appellant's remand period. The sentence was made concurrent with a sentence imposed in an unrelated case.
- [9] In my judgment, there is no error in the exercise of the sentencing discretion by the learned magistrate. The sentence is within the tariff for attempt to rape and the appellant is fortunate that his non-parole is only 1 year. Non-parole period should be at least two-thirds of the head sentence. The rationale for this approach is that the

offender is not entitled for any remission in sentence for an early release until he has served two-thirds of his sentence.

[10] The sentence imposed on the appellant is just and appropriate in all circumstances of the case.

[11] The appeal against sentence is dismissed.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Appellant in person
Office of the Director of Public Prosecutions for the Respondent

