

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 113 OF 2016

STATE

v

JONE TUAGONE

Counsel: Mr A. Datt for State
Ms. J. Singh for Accused

Date of Judgment : 12th June, 2018
Date of Sentence : 22nd June, 2018

SENTENCE

1. Mr. JONE TUAGONE (the Accused) was convicted on the following count after a full defended trial.

Statement of Offence

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

Particulars of Offence

JONE TUAGONE on the 08th day of November 2015, at Tagitagi, Tavua, in the Western Division, had carnal knowledge (penile sex) of AKENETA NAILEVU without the said AKENETA NAILEVU's consent.

2. The Accused chose not to attend the Court after the first day of trial. The trial proceeded *in absentia*. Having considered the unanimous opinion of Assessors, this Court convicted the Accused on the 12th June, 2018.
3. At the time of offending, the Mr. Tuagone (the Accused) was aged 39 years and the complainant was 44 years old. Accused is a brother-in-law of the complainant. The complainant was living alone in a house owned by her uncle in an isolated place. The Accused jumped through the window and entered the complainant's house in an early morning. He came to her bed and forced her to have sex with him and undressed her. The complainant ran outside without her panty, looking for help. The Accused chased her, and having tied her neck with a *sulu*, he dragged her inside the house. In the bedroom, the Accused forcefully penetrated complainant's vagina with his penis. The complainant received injuries when she was being dragged in to the house. She reported the matter to police station. Police officers took her to Tavua Hospital for a medical examination.
4. The maximum penalty for Rape is life imprisonment.
5. 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).
6. 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.
7. Having considered Section 11(1) of the Constitution and Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft the sentence to punish the Accused to an extent which is just in all the circumstances of this case.
8. 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 the offending. The Accused had used considerable degree of force and violence. It was a night time invasion of the privacy and sexual autonomy of a vulnerable woman who was alone at home. 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 9 years' imprisonment as the starting point.

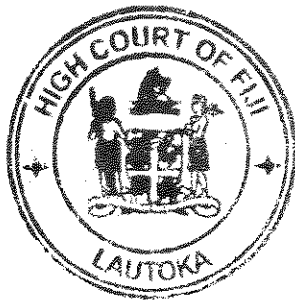
9. I have considered the following aggravating circumstances in light of the Section 4(2) of the Sentencing and Penalties Act and guidelines set out by the Chief Justice Gates in Ram v State [2015] 26; CAV 12.2015 (23 October 2015).
10. The complainant and the Accused are related to each other. Accused breached the trust when he committed this offence in a night time invasion.
11. The complainant suffered injuries all over her body when she was being dragged on the floor. According to the Victim Impact Statement, the Complainant has also suffered psychologically. The doctor who examined the complainant after the incident confirms that the patient had not only received physical injuries but had been affected psychologically.
12. The Accused exploited the vulnerability of the complainant who was living alone.
13. After the incident, the complainant had to relocate herself for her own protection.
14. I considered following mitigating circumstances that the counsel has submitted to this Court.
15. The Accused is 40 year old father of an adopted child. He is suffering from a chest pain at times. I have considered Accused's personal circumstances although they have a very little mitigatory value.
16. Accused is not a first offender. Although the previous conviction is not for similar kind of offence, he should not be given a discount that is given to a first offender.
17. I add 2 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 11 years' imprisonment. I deduct 6 months for


the above mentioned mitigating factors bringing the sentence to one of 10 years and 6 months imprisonment.

18. According to the submission filed by the State Counsel, the Accused had been in remand for approximately 6 months. I deduct further 6 months to reflect his remand period and arrive at a sentence of 10 years' imprisonment.
19. I have considered Accused's rehabilitation potential in determining the non-parole period. 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 8 years.

Summary

20. Mr. JONE TUAGONE is sentenced to 10 years' imprisonment with a non-parole period of 8 years.
21. A committal warrant is issued. The sentence starts to run from the date of the arrest of the offender.
22. 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge
Judge

AT LAUTOKA
22nd June, 2018

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