

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 234 OF 2018S

STATE

Vs

SAMISONI LALANAKORO

Counsels : **Ms. K. Semisi for State**
Accused in Person

Hearing : **30 August, 2018**

Sentence : **31 August, 2018**

SENTENCE

1. On 22 June 2018, the accused first appeared in the High Court. His right to counsel was put to him. He waived his right to counsel and said he would represent himself.
2. On 30 August 2018, the following counts in the following information, was put to the accused.

FIRST COUNT

Statement of Offence

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

Particulars of Offence

SAMISONI LALANAKORO on the 24th day of May 2018 at Nasinu in the Central Division had carnal knowledge of **E. B.**, without her consent.

COUNT TWO

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Act 2009.

Particulars of Offence

SAMISONI LALANAKORO between the 23rd day of May 2018 and the 24th day of May 2018 at Nasinu in the Central Division assaulted **E. B.**, by punching her head and arm, causing her actual bodily harm.

COUNT THREE

Statement of Offence

CRIMINAL INTIMIDATION: Contrary to Section 375 (1)(a)(i) and (2)(a) of the Crimes Act 2009.

Particulars of Offence

SAMISONI LALANAKORO on the 24th day of May 2018 at Nasinu in the Central Division without lawful excuse threatened to cause the death of **E.B.**, by cutting off her head.

3. The information was explained to the accused in the "i-taukei" and English language, and he said, he understood the same. He then pleaded guilty to the three counts in the information.
4. The prosecution read her summary of facts in court. Briefly they were as follows. On 23 and 24 May 2018, the accused was 28 years old. He reached Form 6 level education and worked as a delivery boy for a company in Vatuwaqa. He resided with his grandparents at Tuirara Sub Division, Nasinu. The female complainant was 24 years old, and she works as a sales agent for a telephone company. She resided at Nadera in Nasinu. According to the prosecution, the accused and the complainant were in a relationship for 1 year 5 months. As a result of that relationship, according to the accused, the complainant became pregnant.
5. According to the accused, the complainant allegedly went through an abortion that ended her pregnancy. This caused friction between the two. In addition to the above, the accused was accusing the complainant of having an affair with her ex-boyfriend behind his back. Between 23 and 24 May 2018, the accused took the complainant to his residence at Tuirara Sub Division. On 23 May 2018, after an argument between the two, the accused repeatedly punched the complainant in the head and arms, resulting in her suffering some bodily injuries.

6. On 24 May 2018 after 8.30 pm, the two had an argument over the complainant's alleged affair. The accused then threatened to sodomize the complainant and cut off her head if she was lying to him about the alleged affair. The accused then later inserted his penis into the complainant's anus for about 15 minutes. The complainant suffered injuries as a result. The matter was reported to police. An investigation was carried out. The accused was caution interviewed by police at Nasinu Police Station. He admitted the offence. He was later taken to Nasinu Magistrate Court on 8 June 2018 charged with criminal intimidation, assault and rape against the complainant.
7. "**Rape**", as a criminal offence, had always been viewed seriously by the lawmakers of this country. It is a serious violation of a person's dignity. It demeans a person and is the worst form of sexual assault. Consequently, it carries a maximum sentence of life imprisonment. Previous case laws has set the tariff for the rape of an adult a sentence between 7 to 15 years imprisonment: see **Mohammed Kasim v State**, Criminal Appeal Case No. 14 of 1993, Fiji Court of Appeal; **State v Marawa**, Criminal Case No. HAC 016 of 2003, High Court and **State v Lepani Veimusu**, Criminal Case No. HAC 257 of 2010, High Court. The actual sentence will depend on the aggravating and mitigating factors.
8. In this case, the aggravating factors, were as follows:
- (i) **Breach of the complainant's trust.** You and the complainant had been boyfriend/girlfriend for approximately 1 year 5 months. Obviously, you two loved each other and shared a relationship. That meant that you two trusted each other. However, you two began to quarrel. You accused your girlfriend of having an affair and aborting you two's baby. Couples do quarrel, but it must be resolved in a non-violent way. You decided to intimidate, assault and rape her, as a means of disciplining and controlling her. You have certainly breached the trust she had in you. You will have serve a custodial sentence, not only as a means to pay for your crime, but to teach you to resolve such problems in a non-violent way.
 - (ii) **By offending against her,** you showed no regard to her right as a human being, her right to safety and her right to live a happy and peaceful life.
 - (iii) **By your offending,** you had caused sadness and heartache to her family.

9. The mitigating factors were as follows:
- (i) At the age of 28 years, this is your first offence;
 - (ii) You pleaded guilty to the offence 2 months 8 days after first call in the High Court, and as a result, you saved the court's time;
 - (iii) You had been remanded in custody for approximately 3 months.
10. On count no. 1 (rape), I start with a sentence of 9 years imprisonment. For the aggravating factors, I add another 4 years making a total of 13 years imprisonment. I deduct 3 months from the above, for time already served while remanded in custody, leaving a balance of 12 years 9 months. For pleading guilty early, I deducted 2 years 9 months, leaving a balance of 10 years imprisonment. For being a first offender, I deduct another 2 years, leaving a balance of 8 years imprisonment. On count no. 1, I sentence you to 8 years imprisonment.
11. On count no. 2 (assaulting causing actual bodily harm), I sentence you to 18 months imprisonment.
12. On count no. 3 (criminal intimidation), I sentence you to 18 months imprisonment.
13. The summary of the sentences are as follows:
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|-------|-------------|---|---------------------------------------|---|------------------------|
| (i) | Count No. 1 | : | Rape | : | 8 years imprisonment |
| (ii) | Count No. 2 | : | Assault Causing
Actual Bodily Harm | : | 18 months imprisonment |
| (iii) | Count No. 3 | : | Criminal
Intimidation | : | 18 months imprisonment |
14. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, making a final total sentence of 8 years imprisonment.
15. Mr. Samisoni Lalanakoro, for offending against the complainant on 23 and 24 May 2018, at Nasinu in the Central Division, I sentence you to 8 years imprisonment, with a non-parole period of 7 years imprisonment, effective forthwith.

16. You have 30 days to appeal to the Court of Appeal




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JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused : **Accused in Person**