

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 153 of 2016

BETWEEN : STATE

AND : RATU APISAI SABANI SUSU

Counsel : Mr Seruvatu for the State
Ms Bilivalu for the Accused

Date of Plea : 01 May 2019

Date of Sentence : 15 October 2019

SENTENCE

1. Ratu Apisai Sabani Susu you pleaded guilty to one count of rape contrary to section 207(1) and (2)(a) of the Crimes Act 2009 and another count of common assault contrary to section 274 of the Crimes Act, 2009. The particulars of the offences read as follows;

First Count -

“Ratu Apisai Sabani Susu on the 04th day of August 2016, at Nadi in the Western Division penetrated the vagina of Iva Mere Nacevu with his penis, without her consent.”

Second Count -

“Ratu Apisai Sabani Susu on the 4th day of August 2016 at Nadi in the Western Division, unlawfully assaulted Iva Mere Nacevu.”

2. You were indicted on 28 September 2016. You initially pleaded not guilty to both counts. Three years later you informed the Court that you wish to change your plea and you pleaded guilty to both counts on 01 May 2019.
3. The complainant was your girlfriend. She was 21 years old and you were 26 years old at the time of the offences. On 04 August 2016 at about 7 am you arrived home with one of your cousins. You were already drunk, and you continued to drink with him. The complainant was lying down in the kitchen. At around 11 am you started shouting and the complainant went to a neighbour's house. Then you called the complainant and when she came home you pushed her before locking the door. Your cousin left and you got hold of the complainant's T shirt. You pulled her into a room and threw her on a bed. You forcefully removed her T shirt and the bra. You told her to remove her pants and when she refused, you forcefully removed her pants as well. You threatened to punch her if she doesn't keep quiet. The complainant tried to stand up, but you pushed her back on the bed. You parted her legs and inserted your penis into her vagina. You left after having sexual intercourse, while the complainant was crying in the room. The matter was later reported to the Police and you admitted under caution that you committed the offences.
4. On 27 June 2019 you admitted the summary of facts and upon being satisfied of your unequivocal plea you were convicted for both counts.
5. You used violence and threats of violence in the course of committing the offences. You committed the offences whilst under the influence of alcohol. You violated the trust and security of the relationship you had with the complainant. I consider those as the aggravating factors in this case.
6. I have considered the mitigation submissions filed on your behalf;
 - a. You are now 29 years and in a de facto relationship.
 - b. You have two very young children.

- c. You are the sole breadwinner of the family.
 - d. You have no previous convictions.
 - e. You have expressed remorse by pleading guilty.
 - f. You have cooperated with the police.
7. You pleaded guilty before the trial stage. *Rainima v State* [2015] FJCA 17; AAU0022.2012 (27 February 2015) it was observed that;

“Pleas of guilty made at later stages than earliest opportunity cause more difficulties in the assessment of how much discount should be afforded to them. It is not for this Court to suggest an appropriate sliding scale because it must remain a matter of judicial discretion. We would however make three points very clear in this regard:

- (i) A plea of guilty before trial must be afforded some discount given that the cost of trial (including time and cost of assessors) is saved.
- (ii) A plea of guilty at a later stage before a trial involving a vulnerable witness must be given a meaningful discount (say 20-25%) to recognize the fact that the vulnerable witness is not put through the ordeal of giving evidence.
- (iii) A plea during trial after an accused has heard unshakeable evidence of a victim/complainant or after an inculpatory caution interview has been admitted into evidence is not deserving of any discount whatsoever.”

8. In *Aitcheson V The State* [2018] FJSC 29;CAV0012.2018 (2 November 2018) it was observed that;

“The one third discount may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.”

9. In view of the above sentencing guidelines I am of the view that you are not entitled to 1/3 discount. Yet you will be given a reasonable concession for your plea.
10. The maximum sentence for rape is life imprisonment. The tariff for adult rape is 7-15 years. (Rokolaba v State [2018] FJSC 12; CAV0011.2017 (26 April 2018).
11. The maximum sentence for common assault is one-year imprisonment. There is no set tariff for common assault.
12. The offences in this case are founded on the same facts. Therefore, I decide to impose an aggregate sentence on you pursuant to section 17 of the Sentencing and Penalties Act.
13. Having considered the objective seriousness of the offences I pick 8 years as the starting point. I add 3 years for the aggravating factors. I deduct 2 years for mitigation. Further I give you a discount of 2 years for your plea. Accordingly, I impose an aggregate sentence of 7 years imprisonment on you.
14. You were in remand custody for a period of one month. The time in remand custody has to be regarded as a period of imprisonment already served by you. Therefore, I deduct one month from your sentence.
15. Section 18 of the Sentencing and Penalties Act provides that the Court must fix a period during which the offender is not eligible to be released on parole when the Court sentences an offender for more than two years. However, in the recent Supreme Court decision in Nacani Timo V State Criminal Petition No: CAV 0022 of 2018 it was decided that;

“It is not mandatory for a Court to award a non-parole period to every convict. However, a decision to award or decline to award a non-parole period must be taken by a court after hearing a convict and the decision must be accompanied by reasons, with an economy of words, as a part

of a just, fair and reasonable procedure keeping the interests of the convict and society(including the victim) in mind”.

16. Your counsel has made submissions on setting a non-parole period in your mitigation submissions. I am mindful of the fact that your sentence should encourage rehabilitation and there should not be any hindrance to reap benefits of genuine rehabilitation. I have taken into account the nature of offending, the aggravating factors, mitigating factors and your personal circumstances to consider the issue of setting a non-parole period.

17. It should be noted that you have committed domestic violence offences and violence in domestic context makes offending more serious. The sentence must reflect the significance of deterrence as well as rehabilitation. I am of the opinion that domestic violence nature of the offences makes it an exceptional case to set a non-parole period in this case.

18. Accordingly, you should serve an aggregate sentence of 6 years and 11 months imprisonment. You are eligible for parole after 3 years.

19. Further I issue a permanent domestic violence restraining order for non-contact and for non-molestation for the safety of the complainant.

30 days to appeal to the Court of Appeal.



Rangajeeva Wimalasena
Acting Judge

At Lautoka

15 October 2019

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Legal Aid Commission