

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 276 of 2016**

**STATE**

**vs.**

**KITIONE VAKADRANU**

**Counsel:** Ms. U. Tamanikaiyaroi with Ms. B. Khantaria for the State  
Ms. L. David for Accused

**Date of Hearing:** 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> March 2019

**Date of Summing Up:** 11<sup>th</sup> March 2019

**Date of Judgment:** 12<sup>th</sup> March 2019

**Date of Sentence:** 18<sup>th</sup> March 2019

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**SENTENCE**

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1. Mr. Kitione Vakadranu, you stand convicted for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum penalty of life imprisonment and one count of Criminal Trespass, contrary to Section 387 (1) (a) of the Crimes Act, which carries a maximum penalty of one year of imprisonment.
2. It was proved during the course of the hearing that you have entered into the house of the complainant with a knife in your hand, while she was sleeping in her bedroom in the early hours of the morning of 19<sup>th</sup> of July 2016. You have then threatened her by placing the

knife on her neck, saying that you will kill her, if she screams. You then forcefully had sexual intercourse with the complainant, without her consent. Having completed your disgraceful act, you have threatened her that you would kill her as she would tell about this incident to others. The complainant with the fear of her life had told you that you could come and have sexual intercourse with her whenever you wishes. You have then left the house.

3. Rape is one of the most humiliating and distressing crimes. It not only violates the physical self of a person, but also destroys the personal dignity and self-autonomy of a person. Therefore, rape is a serious offence.
4. I now turn my attention to consider the purpose of this sentence. The main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also reflect that the society denounce such crimes without any reservation.
5. The tariff for the offence of rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period. Tariff for the offence of Criminal Trespass is between one (1) to nine (9) months period of imprisonment.
6. The complainant was 51 years old elderly person at the time this offence took place. The victim impact report states that this crime has adversely affected the victim emotionally and psychologically though it has not caused any long term adverse effects. You have committed this crime, when the complainant was alone at home. You knew that the complainant was alone at home and entered into the house in the night while she was sleeping. You were armed with a knife. You have then threatened the complainant by placing a knife on her neck. Having raped the complainant, you have again threatened her that you would kill her. Accordingly, I find this is a pre-planned crime, committed at a time where the complainant had no prospect of escaping or seeking help. Furthermore, you have

used substantial amount of physical and psychological violence on the complainant. Therefore, I find the level of harm and culpability in this crime is substantially high.

7. In view of the level of harm and culpability, I select eleven (11) years as the starting point.
8. I have considered the amount of violence used in committing this crime in order to determine the level of culpability. I now take into consideration the injuries that you have caused on the complainant in order to determine the aggravating factors. You have caused injuries on her neck and left arm while committing this crime. The complainant was 51 years of old elderly woman and you were 21 years old at the time of this offence took place. Therefore, I find the age difference between the complainant and you are substantially high. The complainant had to sell her house and relocate to the house of her son after this incident. I find these factors as aggravating factors in this matter.
9. The learned Counsel for the defence in her mitigation submissions submitted your personal and family background, which I do not find any mitigatory value.
10. Section 4 (2) (i) of the Sentencing and Penalties Act states that the sentencing court must consider the previous character of the offender. Section 5 of the Sentencing and Penalties Act has provided the factors that could be taken into consideration in determining the previous character of the offender, where it states that:

*“In determining the character of an offender a court may consider (amongst other matters) —*

- i) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions recorded against the offender;*
- ii) the general reputation of the offender; and*
- iii) any significant contributions made by the offender to the community, or any part of it.*

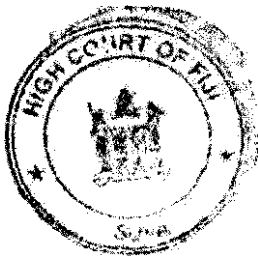
11. There is no evidence or information before this court to consider your general reputation in the society and also no information about any significant contribution that you have made to the community. You have no record of any previous convictions. In view of these factors, I do not find that you are entitled for a significant discount for your previous character.
12. In view of the reasons discussed above, I increase further two (2) years for the aggravating factors to reach thirteen (13) years. In view of your record of no convictions, I reduce one (1) year. I accordingly reach a period of twelve (12) years imprisonment as your final sentence.
13. I sentence you for a period of six (6) months imprisonment to the offence of Criminal trespass.
14. Having considered the seriousness of this crime, the purpose of this sentence and your age, I find ten (10) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### **Head Sentence**

15. Accordingly, I sentence you for a period of **twelve (12) years** imprisonment to the offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and period of **six (6) months** imprisonment to the offence of Criminal Trespass, contrary to Section 387 (1) (a) of the Crimes Act. Both sentences to be served concurrently.
16. Moreover, you are not entitled to any parole for a period of **ten (10) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### Actual Period of the Sentence

17. You have been in remand in custody for this case for a period of one (1) month and three (3) days before the hearing and another period of six (6) days after the conviction as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of two (2) months as a period of imprisonment that have already been served by you.
18. Accordingly, the actual sentencing period is **eleven (11) years and ten (10) months** imprisonment with non-parole period of **nine (9) years and ten (10) months**.
19. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
Judge

At Suva  
18<sup>th</sup> March 2019

Solicitors  
Office of the Director of Public Prosecutions for the State.  
Office of the Legal Aid Commission for the Accused.