

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 222 OF 2017

BETWEEN : **STATE**

AND : **PITA RARA**

Counsel : *Mr. T. Tuenuku for the State*
Ms. A. Bilivalu for the Accused

Hearing on : *19th of October 2020*

Summing up on : *21st of October 2020*

Judgment on : *06th of November 2020*

Sentence on : *03rd of December 2020*

SENTENCE

1. Mr. Pita Rara, you have been found guilty and convicted of a count of Rape contrary to section 207 (1) and (2) (b) of the Crimes Act.
2. The accused pleaded not guilty to the charge and the ensuing trial lasted a day. The complainant Akanisi Suguturaga and Dr. Varanaisi Talai gave evidence for the prosecution while the accused remained silent exercising his constitutional right and called a witness Ms. Lusiana Dakuroko, on his behalf. At the conclusion of the

evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the alleged count of Rape. This court having reviewed the evidence, concurred with the opinion of the Assessors, found you guilty and convicted you of the said count.

3. It was proved during the trial that, being the brother in law of the complainant, how you raped her by insertion of your tongue into her vagina.
4. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.
5. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life.
6. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage.”

7. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

8. In the **State v Lasaro Turagabeci and Others** [1996] FJHC 173; HAC0008.1996S (27 November 1996) Pain J had said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

09. The appropriate tariff as approved by the case of **Rokolaba v State** [2018] FJSC CAV0011.2017 (26th April 2018), is 07 to 15 years of imprisonment.
10. In consideration of the sentencing principles set out in the case of **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013), as well as the above tariff, I will commence your sentence at 07 years of imprisonment.
11. The aggravating factors are as follows:
- (i) There was gross breach of trust.
 - (ii) The impact of the crime on the victim was traumatic.

12. Considering the aforementioned aggravating factors, I enhance your aggregate sentence by further 2 years. Now your sentence is 09 years of imprisonment.
13. Your counsel has indicated that you have no previous convictions or any pending cases and has maintained a clean character.
14. In considering that that you are a first time offender and the rest of the mitigating factors submitted on your behalf I deduct 30 months from the above.
15. Accordingly, I sentence you to a term of imprisonment of 06 years and 06 months. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, and having duly considered all the relevant factors, I order that you are not eligible to be released on parole until you serve 4 years and 6 months of that sentence.
16. Section 24 of the Sentencing and Penalties Act reads thus:

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

17. You were arrested on the 03rd of December 2017. You were in remand till granted bail on the 22nd of December 2017. Thereafter, you were convicted by this court on the 06th of November 2020 and is in remand since then. Earlier you have been in remand for 2 days during the trial from 19th to the 21st of October, 2020. Altogether, you have been in custody for a period of about 1 month and 3 weeks. I will deduct that period as the law provides the period you were in custody shall be regarded as

period of imprisonment already served by you. I hold that a period of 1 month and 3 weeks should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

18. In result, you are sentenced to a term of imprisonment of 06 years and 06 months with a non-parole period of 04 years and 06 months. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence	-	06 years and 04 months and 01 week.
Non-parole period	-	04 years and 04 months and 01 week.

19. You have 30 days to appeal to the Court of Appeal if you desire so.



Chamath S. Morais
JUDGE

At Lautoka

03rd December 2020

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

Solicitors for the Accused : ***Legal Aid Commission, Lautoka.***