

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 104 OF 2020

STATE

v

SUKULU TIKOITOGA

Counsel: Ms. K. S. Semisi for State

Accused in Person

Date of Trial : 21, 21, 22 July 2020

Date of Summing Up : 24 July 2020

Date of Judgment : 31 July 2020

Date of Sentence : 31 July 2020

The name of the victim is suppressed

SENTENCE

1. Mr. Sukulu Tikoitoga, you were tried on the following information:

COUNT 1

Statement of offence

RAPE: Contrary to section 207(1) and (2) of the Crimes Act 2009

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, had carnal knowledge of DT without her consent.

COUNT 2

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the vagina of DT with his fingers without her consent.

COUNT 3

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the vagina of DT with his fist, without her consent.

COUNT 4

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the anus of DT with the handle of a hammer, without her consent.

COUNT 5

Statement of offence

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

Particulars of offence

Sukulu Tikoitoga on the 10th day of March, 2020 at Nasinu in the Central Division, penetrated the mouth of DT with his penis without her consent.

COUNT 8

Statement of offence

WRONGFUL CONFINEMENT: Contrary to section 286 of the Crimes Act 2009.

Particulars of offence

Sukulu Tikoitoga between the 10th day of March, 2020 and 13th day of March 2020 at Nasinu in the Central Division, wrongfully confined DT.

2. You pleaded 'not guilty' to the charges and after the ensuing trial, you were convicted on counts 1, 2, 3, 5, 6 and 8 and acquitted of count 7. On count 4, you were convicted of Attempt to Commit Rape.
3. The maximum penalty for rape is imprisonment for life.
3. The tariff for rape in Fiji is well settled. When the victim is an adult, a minimum of 7 years' imprisonment should be imposed. *Particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point (Mohamed Kasim v The State (unreported) Cr. Case No. 14 of 1993; 27 May. The sentencing tariff ranges from 7- 15 years imprisonment.*
5. The maximum penalty for the offence of Attempt to Commit Rape is 10 years' imprisonment. The tariff ranges from 12 months to 5 years' imprisonment. *Jioji Aunima v The State HAA 033 of 2001 (27 June 2001).*
6. Maximum sentence for Assault Causing Actual Bodily Harm is 5 years' imprisonment. The tariff ranges from an absolute discharge to 12 months' imprisonment. In domestic violence cases, sentence of 18 months imprisonment has been upheld. *State v Tugalaga [2008] FJHC 78 (29 April 2008).*
7. The offence of Wrongful Confinement carries a maximum sentence of 5 years and the tariff is between 6 months and 24 months imprisonment. *State v Prasad [2012] FJHC 1246.*

8. The convictions were based on the same facts. Therefore, this is a fit case to impose an aggregate sentence in terms of Section 17 of the Sentencing and Penalties Act. Accordingly, I would impose an aggregate sentence for all the counts you were convicted of.
9. The facts of the case are that, at the time of the offence, you were in a short romantic relationship with the complainant. On 9 March 2020, the complainant left the house and went to her aunty's house in Caubati. She left the house because you were late that night and she was scared to be in the house alone, without lights. You were angry at her conduct and suspicious that she had left the house to sleep with another man.
10. You brought her back to Sakoca. You picked up a metal hammer and threw it at her. She got a shock because it was painful. After that, you told her to move forward and take off her clothes. You then told her to lie down on the bed and spread her legs. Then you inserted your two fingers into her vagina. She felt pain inside her vagina. You did not heed her call to stop. You kept inserting your two fingers into her vagina. Then you inserted your fist into her vagina. It was so painful that she felt like her vagina was going to burst. She was crying and begging you to stop, but you kept on inserting your fist into her vagina. You threatened her to keep quiet or else you will hit her head with the hammer. You took her panty and put it inside her mouth. You tied her mouth around the head with a sock. You then told her to turn around and bend down on a side of the bed. You picked up a hammer and attempted to insert its handle into her anus. She could not say anything because her mouth was tied up. She was weak so she fell on the floor. Then you inserted two fingers again into her vagina. She told you to stop, but you kept inserting your finger into her vagina. You took out the panty from her mouth and forced her to suck your penis. You threatened to strike her face with a pair of scissors and cut her hair. She then sucked your penis. While she was sucking, you got the pair of scissors and cut her hair. She could not do much and run away. Then you told her to lie down and you forced her to have sex with you. When she refused, you punched her ear. When she was lying down on the floor, you inserted your penis into her vagina. She was crying, she was scared and weak. She asked you to stop. You then pulled out your penis from her vagina and told her to sleep. You woke up first and stepped on her head while she was still sleeping. You stomped her head with the sole of your foot. She was scared and shocked.
11. At the incident, the complainant had received visible injuries and an ugly hair-cut. You were scared that she would leave the house and report the matter to police. Although the door was

not properly locked, you ensured that the victim did not leave the house. When she went to sleep, you went and slept beside her. You confined her into the house from 10-13 March 2020. She finally managed to escape when you were fast asleep and report the matter to police.

12. I now proceed to craft your sentence that is proportionate and just in all the circumstances of this case.

Aggravating Features

- a. There is evidence of premeditation. You brought the complainant down from Caubati to Sakoca to commit these offences.
- b. You demonstrated a high level of violent behaviour when you assaulted the victim. You used weapons, a hammer and a pair of scissors, to attack the victim. This was a persistent attack over a prolonged period where the victim was subjected to continuous assaults. The assault continued even after the victim's body was weak and when she fell down on the floor. Irregular hair cut was done to disfigure her looks.
- c. The Medical Report and the statement from the examining doctor notes the serious physical harm received as a result of this attack. Furthermore, the mental, and emotional suffering (psychological harm) caused to the victim is evident as per her Victim Impact Statement.
- d. The victim was alone in her home where she was entitled to safety and security. She was in a highly vulnerable situation when you committed these offences.
- e. You took every effort to confine her to house in order to prevent her from leaving and reporting the matter to police. You threatened to commit suicide to force the victim to withdraw the complaint.
- f. You were in a relationship with the victim at the time of the incidents. She trusted you and she accompanied you to your house in Sakoca. You have committed these offences when you were in a domestic relationship. You breached the trust that existed between you and the victim.

13. Mitigating circumstances


You were given an ample opportunity to come up with your mitigation. You refused to take legal assistance from the Legal Aid Commission.

- a) You seek mercy of this court.
- b) You have a right to defend and cross examine the victim. However, your conduct during the trial does not indicate that you are 'genuinely remorseful'.
- c) You have cooperated with the police however, that co-operation is not indicative of 'genuine remorse' on your part.

14. You have been in remand for 4 months. I have taken into consideration the remand period into consideration in deciding your sentence.
15. You admit that you have 22 previous convictions since the year 2006. You do not deserve any discount for previous good character. Most of the convictions are for robbery, theft and drug related offences. Only conviction of similar nature is that of Indecently Insulting or Annoying females.
16. The State Counsel has made an application that you be declared as a Habitual offender. All the prerequisite prescribed in Section 11 of the SPA are met. You are convicted of an offence of a nature that is prescribed under section 10 of the SPA. Although you have committed only one offence of similar nature during the past 10 years, I am satisfied that you are a threat to the society and women. Having regard to your long string of previous convictions, I am satisfied that you constitute a threat to the community. Therefore, I declare you to be a habitual offender.
17. The culpability level is extremely high in this case. The harm caused to the victim is irreparable. Having considered the gravity of the offence and the harm caused to the victim, I pick a starting point of 10 years from the top range of the tariff.
18. I increase your aggregate sentence by 5 years to reflect the aggravating features of all the offences you have committed. I give a discount of 12 months to reflect the remand period and the mitigating features to arrive at an aggravate sentence of 14 years' imprisonment.

19. The primary purpose of sentencing for this matter should be denunciation and deterrence, both special and general. This was a bad case of sexual violence. The sexual autonomy of a woman must be respected and cannot simply be violated at will. A clear message should be sent to the society.
20. The sentences handed down from this court for sex offenders are comparatively high in the Pacific. Still the statistics for domestic and sexual violence in Fiji are always awful. Most of the cases do not come to light because some victims think that the sustainability of relationship is far more important and they don't take trouble to complain. Some of them remain passive partners due to ignorance, shame, fear or cultural taboos. I do not believe that the intervention of courts alone is sufficient to control this situation. Social, economic and cultural solutions must be found and they should go hand in hand eliminate, if not at least to mitigate the impact caused by sexual and domestic violence in Fiji.
21. Mr. Sukulu Tikoitoga, you are sentenced to 14 years' imprisonment with a non-parole period of 12 years.
22. 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge
Judge

At Suva

31 July 2020

Counsel: Office of the Director of Public Prosecution for State