

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

CRIMINAL CASE NO. HAC 075 OF 2020

BETWEEN : STATE

AND : KARALO USAMATE

Counsel : Ms J Fatiaki for the State
Ms R Raj for the Accused

Date of Hearing : 16 November 2021

Date of Sentence : 3 December 2021

SENTENCE

[1] The Accused has pleaded guilty to the following charges:

Count One: Attempted rape contrary to section 208 of the Crimes Act.

Count Two: Assault with intent to commit rape contrary to section 209 of the Crimes Act.

Count Three: Sexual assault contrary to section 210 (1) of the Crimes Act.

[2] The facts in support of the charges are as follows:

On the 27th of October 2020 the complainant was returning home from school in the bus to Naselesele settlement. The complainant got off the bus at the junction of her home in Naselesele settlement and began walking towards her home. The accused also got off the same bus and

greeted the complainant as she was walking along the isolated path surrounded by the jungle.

Suddenly the complainant felt that someone tackled her hip from the back and as a result she fell on the ground facing upwards. As she fell she saw the accused. The accused then punched her several times on her face. At this point the complainant yelled for help twice. After punching her, the accused dragged her into the bush by holding her right hand.

The accused then pulled the complainant's brown panty and black tights and told her that if she shouted he would kill her. The accused then licked her vagina.

After he licked her vagina the accused then rubbed his penis on her vagina. As the accused was about to penetrate her vagina, the complainant heard her mum's voice.

At this point the complainant again yelled for help. By this time the accused ran and the complainant's mum arrived at the scene.

The complainant quickly informed her mum as to what happened and they both ran home. On her way they met a police officer and reported the matter immediately.

Matter was immediately reported and the complainant was medically examined. Complainant was thereafter admitted. The D12 of the medical report date 27th October 2020 showed upper and lower lip laceration, bruise on left eye and an abrasion noted on the right hand.

The accused was then interviewed under Caution on the 28th day of October 2020 at the Nabouwalu Police Station.

The accused in the caution interview made admissions at question and answer 48 to 87.

- [4] All three offences are part of one transaction. They carry the same maximum penalty – 10 years imprisonment. The principal offence is attempted rape. The tariff for attempted rape range from 1 to 5 years imprisonment (*Aunima v State* [2001] FijiLawRp 50; [2001] 1 FLR 213 (27 June 2001). In *R v Behich* (1986) 8 Cr. App. R(s) 387 a sentence of seven years imprisonment for attempted rape was upheld where there was a serious degree of violence.
- [5] I pick an aggregate term of 4 years as my starting point to reflect the objective seriousness of the three offences.
- [6] The Accused is 30 years old. He is in a de-facto relationship. He has two children from that relationship. He has 13 previous convictions mostly for theft.
- [7] The only mitigating factor is his early guilty plea. The guilty plea has saved court's time and resources and has relieved the victim from the trauma of giving evidence. I give a discount of 2 years to reflect these factors.
- [8] The aggravating factors are:
1. The victim was a child of 17 years of age.
 2. Gratuitous violence was inflicted on the victim – she was hospitalized for 3 days.
 3. Threats were made to kill the victim.
 4. The victim sustained physical injuries and was traumatized.
 5. The Accused made contact with the naked genitalia of the victim.
 6. The impact of the crime on the victim is significant according to her victim impact statement.
- [9] I add 6 years to reflect the aggravating factors.
- [10] The Accused is convicted and sentenced to an aggregate term of 8 years imprisonment.

[11] The Accused has already spent 1 year and 1 month in custody on remand.

[12] The remaining term for the Accused to serve is 6 years and 11 months imprisonment. I fix a non-parole period of 5 years. By this sentence, the court denounces the crime in the strongest terms.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused