

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 288 of 2022

STATE

vs.

ALIPATE LAUTI

Counsel: Ms. B. Kantharia for the State
Ms. P. Mataika for Accused

Date of Sentence/Mitigation Submission: 11th May 2023

Date of Sentence: 30th May 2023

SENTENCE

Introduction

1. The Director of Public Prosecutions has charged the Accused for the following offences as per the Information dated 11 October 2022;

COUNT ONE

Statement of Offence

ROBBERY: contrary to Section 310 (1) (a) (i) of the Crimes Act, 2009.

Particulars of Offence

ALIPATE LAUTI on the 30th day of July 2022 at Lami, in the Central Division,

robbed one **LORRAINE ALICE EVANS** of \$50.00 cash and 1 x dark grey Samsung A31 mobile phone, the properties of **LORRAINE ALICE EVANS** and immediately before stealing the said properties, under force on **LORRAINE ALICE EVANS**.

COUNT TWO

Statement of Offence

INDECENT ASSAULT: contrary to Section 212 (1) of the Crimes Act, 2009.

Particulars of Offence

ALIPATE LAUTI on the 30th day of July 2022 at Lami, in the Central Division, unlawfully and indecently assaulted **LORRAINE ALICE EVANS** by kissing on lips.

COUNT THREE

Statement of Offence

RAPE: contrary to Section 207 (1) and (2) of the Crimes Act, 2009.

Particulars of Offence

ALIPATE LAUTI on the 30th day of July 2022 at Lami, in the Central Division, had carnal knowledge of **LORRAINE ALICE EVANS** without her consent.

COUNT FOUR

Statement of Offence

RAPE: contrary to Section 207 (1) and (2) (b) of the Crimes Act, 2009.

Particulars of Offence

ALIPATE LAUTI on the 30th day of July 2022 at Lami, in the Central Division, penetrated the vagina of **LORRAINE ALICE EVANS** with his fingers without her consent.

COUNT FIVE

Statement of Offence

RAPE: contrary to Section 207 (1) and (2) (b) of the Crimes Act, 2009.

Particulars of Offence

ALIPATE LAUTI on the 30th day of July 2022 at Lami, in the Central Division, penetrated the anus of **LORRAINE ALICE EVANS** with his fingers without her consent.

COUNT SIX

Statement of Offence

ATTEMPTED RAPE: contrary to Section 208 of the Crimes Act, 2009.

Particulars of Offence

ALIPATE LAUTI on the 30th day of July 2022 at Lami, in the Central Division, attempted to penetrate the anus of **LORRAINE ALICE EVANS** with his fingers without her consent.

COUNT SEVEN

Statement of Offence

SEXUAL ASSAULT: contrary to Section 208 of the Crimes Act, 2009.

Particulars of Offence

ALIPATE LAUTI on the 30th day of July 2022 at Lami, in the Central Division, unlawfully and indecently assaulted **LORRAINE ALICE EVANS** by sucking her nipples.

COUNT EIGHT

Statement of Offence

ATTEMPTED THEFT: contrary to Section 44 (1) and section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

ALIPATE LAUTI on the 30th day of July 2022 at Lami, in the Central Division,

attempted to dishonestly appropriate (steal) 1 x dark grey Hyundai registration number FS 759 with the intention of permanently depriving **LORRAINE ALICE EVANS** of the said property.

2. Mr. Alipate Lauti, on the 8th of May 2023 you being represented and well advised by counsel pleaded guilty to all the aforesaid eight counts. Then on 11th May 2023 the summary of facts was read which you understood and accepted. This court convicted you of counts 1 to 5, 7 and 8 as the facts proved the elements of the said charges. However you were acquitted of count No.6.

Facts

3. The complainant Ms. Lorraine Alice Evans was around 80 years old living alone in Lami, since her husband's demise in 2015. On 30/07/22, had returned home shortly after 6.15 in the evening. After a change of clothes she had been in her easy chair watching a movie on Netflix. As she was expecting a visitor the door was unlocked. Then you stealthily walk to her and place your hands over her mouth, nose and eyes; Ms. Evans struggle for breath. You were wearing hand gloves, black clothes, a hat and had your face covered with a cloth. Ms. Evans was struggling and knocked off your cap.
4. You then pushed the chair over backwards put Ms. Evans on her back and got on her. She was struggling and begging you not to hurt her and to get off her when you forcefully kissed her on her lips with the dark fabric on his mouth (**count No. 2- indecent assault**). Then you forcibly removed her pants and panty off her, when Ms. Evans said '*you not gonna kill me, aren't you, you not gonna hurt me, I am 79 you not gonna hurt me, you don't want to do this.*'.
5. Then you held her legs up and forcefully penetrated your erected penis into her vagina (**count No. 3 Rape**). Then you did penetrate two fingers her vagina. (**count No. 4- Rape**). Ms. Evans' pleaded with you not to hurt her and to stop it but you kept doing and she was experiencing pain in her vagina. Then you did forcefully turn Ms. Evans over and spat on your hand wet it and penetrated her anus with your finger (**count**

No.5- Rape). Then as you were not able to penetrate her anus with your penis due to the angle you then forcibly removed her top and sucked both her nipples (*count 7- Sexual Assault*).

6. You then took her towards her room when Ms. Evans reacted fast entered the bedroom and engaged the security chain sliding it to the bolt swiftly. You try to push the door open when she sprayed an air freshener and a body spray to your face; then using the land phone call her neighbours for help. Hearing this you took her mobile phone and \$50 (*count No. 1-Robbery*), got in to her car, to get away when a neighbour Charles, drove in. Then you were in Ms. Evans' car bearing registration No. FS 759 trying to get away but was prevented from so taking the vehicle as you were blocked by Mr. Charles' vehicle (*Count No. 8-Attempted theft*). Then you took to your heels and fled the scene. The mobile phone was later recovered by the police from a neighbour's compound.

Sentencing Regime

7. The maximum penalty for the offence of **Robbery** under Section 310 (1) (a) (i) is fifteen years imprisonment and the tariff, if there is no violence it is between 2 – 7 years and with violence is between 8-14 years imprisonment. (Vide-**Rarawa v State** - Sentence [2015] FJHC 324; **HAA05.2015 (30 April 2015)**, Justice Paul Madigan considering the tariff for the offence of sexual assault stated thus,

“[16] To facilitate sentencing for robbery simpliciter, it would be appropriate to apply two tariffs one for robberies accompanied by violent force should be in the range of 8 to 14 years (in recognition of the lower maximum penalty applied to robbery by the legislature as opposed to the penalty for aggravated robbery). The general tariff for robbery, not accompanied by violence, can then be visited with sentences in the range of two to seven years.”

8. The maximum penalty for the offence of **Attempted theft** under Section 44(1) read with 291 of the Crimes Act is ten years imprisonment and the tariff, if there is no violence it is between 4 months to 3 years. [Vide-**Waqaa v State** – (HAA17 of 2015)].
9. The maximum penalty for the offence of **Rape** under Section 207 (1) and (2) is life imprisonment. As the law stands now the tariff for the rape of an adult victim is between 7

- 15 years' imprisonment. [Vide- **Rokolaba v State** - [2018] FJSC 12; CAV0011.2017 (26 April 2018)].

10. The maximum penalty for the offence of **Sexual Assault** under Section 210 (1) (a) is ten years imprisonment. As the law stands now the tariff for sexual assault is between 2 - 8 years' imprisonment. In **State v Laca** - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012), Justice Paul Madigan considering the tariff for the offence of sexual assault stated thus,

*“6. The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in **Abdul Kaiyum** HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.*

7. A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

(i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia) ”.

11. The maximum penalty for the offence of **Indecent Assault** under Section 212 (1) of the Crimes Act is five years imprisonment and the tariff, if there is no violence it is between 12 months to 4 years. [vide-**Ratu Penioni Rokota v State** – [(2002) FJHC 168].

Objective Seriousness of Rape and Robbery

12. Rape and Sexual abuse as well as robbery and theft are certainly very serious offences for which the prescribed sentences are life imprisonment and 15 years imprisonment. Further according to the cases transmitted to this court and the statistics made public by the office of the DPP as well as the police for the first quarter of this year it is apparent that Rape as well as Robbery are prevalent and there appears to be an appreciable alarming increase. As Psychologists have opined time and again, the effect of sexual abuse and rape on the victims is long lasting, affects their life and the relations with the society and is now a social issue of concern. Women must be protected and it is the duty and obligation of the society and all organs of the state to so protect and to ensure that they are safe and secure in the society.
13. Rape as well as sexual assault are physical invasions committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.
14. Robbery especially in the nature of home invasion causes profound sense of insecurity, fear and affects the entire social wellbeing of the society. The prevalence certainly is now has a direct impact on the society and the peaceful life of the populace. In short it strikes at the root of the sense of security within one's own home.
15. You have been found guilty of a several acts of rape and of sexual crimes of utmost gravity as well as robbery and theft. There are many features that aggravate the culpability and harm factors. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact statement which, the victim herself read and explained in court states that she .A.V finally states that

it is very difficult to forget the “horrible *memories which she was exposed to at a very young age that takes away her right to her body*”.

16. Hence without doubt this crime has caused mental and psychological trauma and affected her self-confidence. Thus, the level of harm of this offence is significantly high. It is clear from the victim impact statement and what Ms. Evans said that she was living alone since her husband died 8 years ago and never believed that anything like this could happen to her. Since this incident she lives in fear in her own house and is always worried that Alipate Lauti would return and kill her. She even is afraid of other Fijian man even of the gardeners and other who come for jobs. She had panic attacks when she hears any noise and also she suffers from anxiety that she may be infected with HIV Aids.
17. Ms. Evans has lost interest in her commercial business and is now withdrawn and lost interest in socializing so much so her business income has declined.
18. Even after 10 months she continues to have sleepless nights and suffers vivid nightmares of the various frightening and horrendous acts committed by the Accused. She had been extremely a social character who had been promoting Fantastic Fiji and the friendly Fijian people. Now her view of the Fijian people have drastically changed. It is not only as regards Fijian man but after 80 years of living she is now extremely frightened and is unable to trust men and lives with a constant fear of men. Simply she is now devastated so much so she fears to walk into her own house freely.
19. Your offending has had a profound and long-lasting psychological impact on this vulnerable 8 years old lady which I am required to take in to consideration in sentencing.
20. In view of the serious nature and the prevalence of crimes of this nature, the primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of this Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community especially the children from offenders of this nature. A harsh and long custodial sentence is inevitable for offences of this nature to

demonstrate the gravity of the offence and reflect that civilised society denounces such crimes without any reservation.

The Aggravating Circumstances

21. You have certainly pre-planned the entry and robbery and it appears from your caution interview that the act of Rape was incidental or opportunistic. Considering the age of the victim and the manner you man-handled her it was certainly violent and you almost asphyxiated her in the process. You have caused physical as well as long standing psychological harm to her. She suffered several minor injuries to her lips as well her genitalia. You have committed all these acts within her own residence and you have invaded her privacy and safety. She was 79 years old whilst you are 20 years and the disparity in age was 59 years. She was extremely vulnerable due to her age and living alone. You have taken advantage of this vulnerability.
22. You fled taking her phone and \$50.00 and was attempting to take her vehicle for you are getaway. It was her timely action of locking herself that prevented further harm. You had no sympathy or concern to her advanced age during the offending. This was committed at night and the acts of sexual abuse and rape are many and multifaceted. These are your aggravating factors and now let's consider the mitigating factors in your favour.

Mitigating circumstances

23. You are now 22 years single and had been employed at Walu Bay as a process worker earning \$50 per week and looking after your grandparents. It is submitted on your behalf that you are a first offender and a person of good character. However, according to your antecedent report you have two convictions in April 2021 for Criminal Intimidation and failure to comply with orders. As there are not of a similar nature I will disregard them and consider you a person of good character.
24. You certainly did plead guilty and relieved Ms. Evans from having to of through the ordeal the harrowing experience and also save the time of this court. To a certain degree you by

this exhibited some degree of remorse and regret. When Ms. Evans read and explained the victim impact statement in court you voluntarily expressed your regret and apologies to her. You have to some degree cooperated with the police.

Sentence

25. Your offences are so serious that only a custodial sentence can be justified. The least possible sentences I can impose, having regard to the aggravating and mitigating factors of the case, will be as follows:

26. I will consider your sentences in the aggregate form for the offences of Rape, sexual assault and indecent Assault (counts 2, 3, 4, 5 and 7) separately taking Rape as the base offence. Then in the aggregate form for the offences of Robbery, theft and attempted theft (counts 1, and 8) taking Robbery as the base offence.
 - a. I will start with the serious offences of rape. For the aggregate sentence for counts 2, 3, 4, 5 and 7, I pick and start with a sentence of 10 years imprisonment. I add 4 years for the aggravating factors, making a total sentence of 14 years imprisonment. As for the mitigating factors (except for the early guilty plea) I will I deduct 2 years for leaving a balance of 12 years and for the early guilty plea I deduct 4 years and the I sentence you to an aggregate term is 8 years imprisonment for counts 2, 3, 4, 5 and 7.
 - b. Now, as for the aggregate sentence for counts 1 and 8, I pick and start with a sentence of 4 years imprisonment. I add 2 years for the aggravating factors, making a total aggregate sentence of 6 years imprisonment. As for the mitigating factors I will I deduct 1 year for leaving a balance of 5 years imprisonment and for the early guilty plea I deduct 1 year and I sentence you to an aggregate term of 4 years imprisonment for counts 1 and 8.

27. I am satisfied that you are you are dangerous. The public need to be protected from you. On the one hand this is a case which would justify a long ‘denunciatory’ sentence. I bear in mind that, such a sentence is one of last resort. However, in the circumstances of this

offending in my judgment, justice and protection of the public can and should be achieved by such a very long sentence.

28. I have to bear in mind totality but, to in my thinking the aggregate sentences for rape and robbery must be consecutive. The aggregate sentences for Rape and for Robbery are based on acts of a different nature though committed in the course of the same offending. To arrive at a just compromise between the competing factors and interest of the society I direct and order that, the aggregate sentences for Rape and for Robbery run consecutively. The total sentence then is 12 years imprisonment.
29. In view of the reasons discussed above, I sentence you to a total period of twelve (12) years imprisonment for the counts of Rape and sexual assault indecent assault, robbery and attempted robbery for which you stand convicted being the consecutive sentence of the two the aggregate sentences as aforesaid.

Non-Parole period

30. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a nine (09) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for nine (09) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
31. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was 79 years of age and alone at home compels me to state that the purpose of this sentence is to punish you in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to clearly manifest that the court and the community denounce what you did to the complainant and in a manner which is just in all the circumstances of the case.

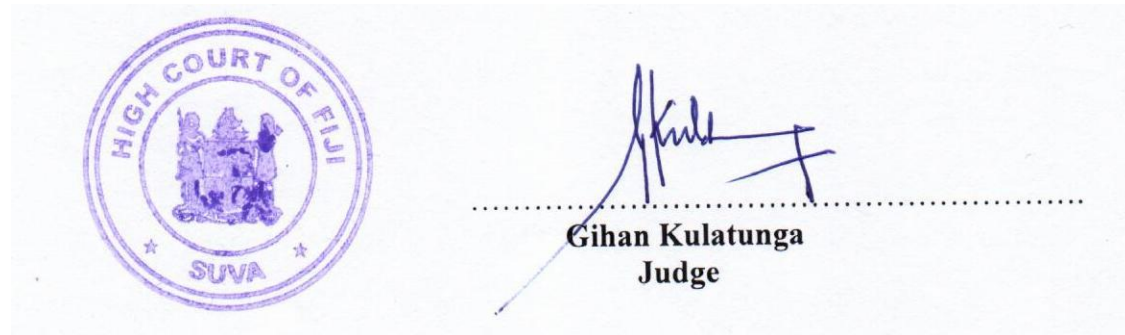
Head Sentence

32. Accordingly, I sentence you to a period of twelve (12) years imprisonment for the counts of Rape and sexual assault indecent assault, robbery and attempted robbery as charged and

convicted. However, you are not entitled to parole for nine (9) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

33. You were in arrested remanded for this case on 08th August 2022 and had been in remand up to date. You have been in custody for a period of 9 months and 22 days. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 10 months be considered as imprisonment that you have already served.
34. Accordingly, the actual sentence is a period of is eleven (11) years and two (02) months imprisonment with a non-parole period of eight (08) years and two (02) months
35. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Suva

30th May 2023

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused