

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 142 OF 2016

STATE

v

POKITI NALEBA

Counsel:

Ms. S. Kiran for State

Ms. K. Vulimainadave and Ms. B. Lata for Accused

Date of Judgment : 25th June, 2018

Date of Sentence : 9th July, 2018

SENTENCE

1. Mr. Naleba, you were found guilty on following count by three assessors after a full defended trial.

Statement of Offence

RAPE: Contrary to Section 207 (1) and Section 207 (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

POKITI NALEBA on 8th day of December, 2015, at Nadi in the Western division, penetrated the vagina of RANJEET KAUR with his penis, without her consent.

2. The Court accepted the unanimous opinion of the assessors. Having been convicted, you now come before this court for sentence.
3. The facts of the case briefly are that you came to Complainant's house to massage her husband's paining leg and promised to buy him some herbal medicine from Rakiraki. Having brought medicine, you visited Complainant's house and wanted to talk to her about a dream. When Complainant's husband fell off asleep under a tree, you followed the Complainant to her room and started touching her. When she was trying to leave the room you closed the door. When the Complainant tried to call her daughter you pressed her mouth. You then removed Complainant's clothes and inserted your penis into her vagina without her consent. You threatened her not inform anyone or else you will harm her family.
4. The maximum penalty for Rape is life imprisonment.
5. The tariff for rape of an adult ranges between 7 and 15 years' imprisonment (*State v Marawa* [2004] FJHC 338). The starting point is seven years' imprisonment *Kasim v The State* (Crim App. No. AAU0021j of 1993S).

6. Rape is the most serious sexual offence. This heinous crime is prevalent and is on the rise in Fiji. The offenders must be punished to denounce and to send a clear message to the community that no such actions will be tolerated by courts. Not only the offender but potential offenders must be deterred. The offender must be severely punished to ensure safety and security of all women. Main purposes of your sentence are to deter you and other potential offenders and to denounce the horrendous crime you have committed on womanhood.
7. Bearing in mind Section 11(1) of the Constitution and Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.
8. In selecting the starting point, the Court must have regard to the objective seriousness of the offence. In doing so, I have considered the culpability and the harm factors of your offending. You have used a degree of force and invaded the privacy of a naïve woman. Having considered the gravity and objective seriousness of the offence, and principles laid down in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 8 years' imprisonment as the starting point.
9. I have considered following aggravating circumstances in light of the Section 4(2) of the Sentencing and Penalties Act and guidelines set out by the Chief Justice Gates in *Ram v State* [2015] 26; CAV 12.2015 (23 October 2015).
 - i. The Complainant and her husband treated you as a therapist and placed much trust on you. You breached that trust when you committed this offence.
 - ii. You threatened to harm Complainant's family to sweep the heinous crime you committed under the carpet.
 - iii. As per the Victim Impact Statement and evidence led in trial the Complainant had undergone immense humiliation and suffering.

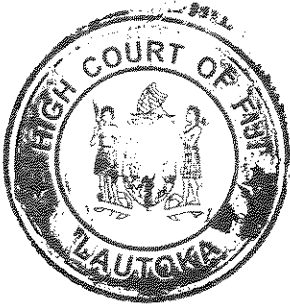
10. I have considered following mitigating circumstances that your Counsel has submitted to this Court.
 - i. You are a 57 year old father of 7 children. You are employed as a driver and the sole breadwinner of your family.
 - ii. You cooperated with police and promise not to reoffend.
 - iii. You do not have active previous convictions. Therefore I treat you as a first offender.
 - iv. The character references filed by your Counsel show that you have maintained a good character not only at your previous work place but also within your community. You have served as firefighter and rendered a good service to the community until you retired from National Fire Authority of Fiji.

11. I increase your sentence by 2 years to reflect aforementioned aggravating features bringing your interim sentence to 10 years' imprisonment. I deduct 1 year to reflect the mitigating circumstances aforementioned.

12. You have spent nearly a month in remand. Your remand period is deducted from your sentence. Your final sentence is 8 years and 11 months' imprisonment.

13. Having considered the decision in *Tora v State* Crim. App. No. AAU 0063 of 2011 (27 February 2015), your age and the fact that you are a first offender, I fix a non-parole period of 6 years. You are thus eligible to parole after 6 years in prison.

14. You are sentenced to 8 years' and 11 months imprisonment with a non-parole period of 6 years.
15. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge

Judge

At Lautoka

9th July, 2018

**Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for Accused**