

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 39 of 2017

THE STATE

V

ULIANO SAMUNAKA

Counsel: Mrs. A. Vavadakua for the State
Ms. L. Boseiwaqa (L.A.C.) with Mr. U. Koroi
for the Accused

Date of Trial: 16, 17 August 2018
Date of Summing Up: 17 August 2018
Date of Judgment: 17 August 2018
Date of Sentence: 20 August 2018

SENTENCE

1. The accused has been convicted after trial in this Court of the following count.

Statement of Offence

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

Particulars of Offence

ULIANO SAMUNAKA on 23 July 2017, at Navetau Village Saqani in the Northern Division, penetrated the vagina of (name suppressed) with his finger, without her consent.

2. Kate (not her real name) is a married middle aged woman of the same village of the accused. In the early hours of the morning of the 23 July 2017, her husband was away and she was sleeping alone in her bed. She woke to intense pain, to find the accused on top of her sexually abusing her and invading her with his fingers. She could not shout out to relatives sleeping in the next room because he was forcing her mouth shut with his other hand. He tried to force her legs apart but she resisted, so he punched her twice on her thigh, then left the room and the house. She then managed to shout and alert a young relative sleeping in the next room, who went outside to look for the accused, unsuccessfully. The accused had been with his peers drinking grog and home brew from about 8pm the evening before.
3. The maximum penalty for rape is life imprisonment and sentences for rape of an adult range from 7 years to 25 years (***Kasim*** Cr. App 14 of 1993 – C.A. and ***Marawa*** [2004] FJHC 338).
4. The accused has four previous convictions, one for indecent assault, one for theft and two for assault causing actual bodily harm.
5. In mitigation, his counsel submits:
 - He is 27 years old, living in a de facto relationship
 - He has a son aged 7

- He has worked as a farmer earning \$100 per week
 - He is a contract rugby player and is due to take up a contract in 2 months' time
 - He is the sole breadwinner for his family which includes his elderly parents, his 3 younger siblings
 - He spent two months in custody before being granted bail.
6. Counsel for the State reminds the Court of the aggravating features revealed at trial:
- Violence was used
 - It was a middle of the night invasion

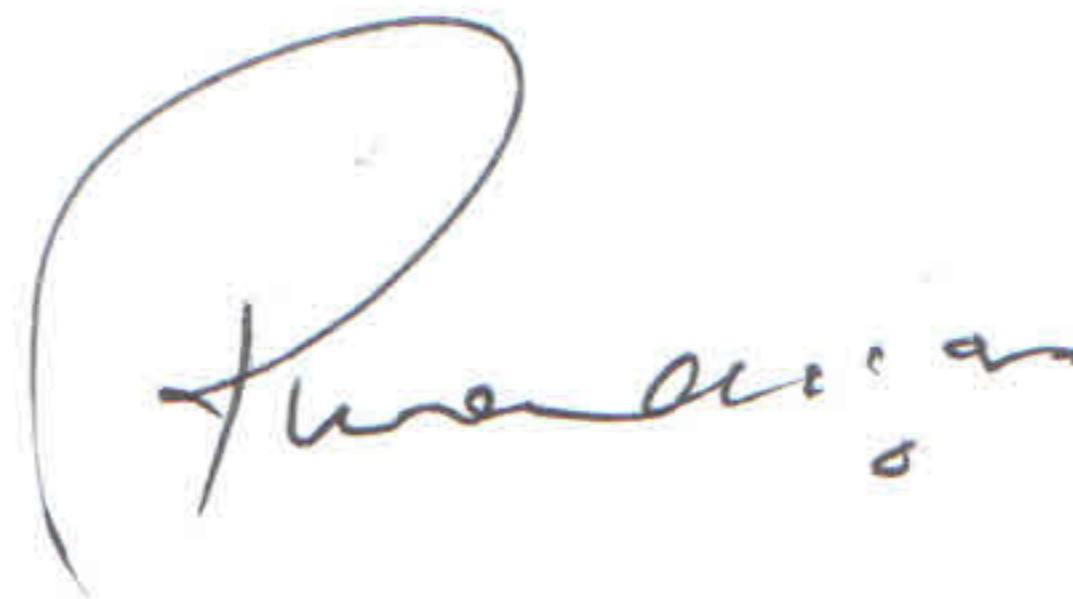
Sentence

7. I take a starting point of 7 years for this offence. To that starting point I add another three years for the aggravating features referred to above in paragraph 6, bringing the interim total to a term of ten years.
8. The accused's previous record reflects a history of violence and sexual assault and while he will not be penalized further for those convictions, he will not receive a discount for good character.
9. His alleged prowess as a rugby player and his forthcoming contracts to play abroad are of no interest to the Court and play no part in mitigation in Fiji (see **Batiratu** HAR001.2012 per Gates C.J.)
10. I deduct 6 months from the sentence to reflect the two months he spent in remand and the arduous future for his dependents without him.

11. The sentence I pass on this accused is one of 9 years 6 months and he will serve 8 years before being eligible for parole.
12. He has 30 days to appeal to the Court of Appeal should he be aggrieved.

Order

13. Sentenced to 9 years 6 months with a minimum term of 8 years.



P. K. Madigan
Judge

At Labasa
20 August 2018

