

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 203 OF 2016

STATE

-v-

INOKE SALAYAVI

Counsel : Ms. J.B. Niudamu for State
Ms. S. Hazelman for Accused

Date of Sentence : 17th March, 2017

SENTENCE

[1]. Mr. Inoke Salayavi, you were charged on following Information.

COUNT 1

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

INOKE SALAYAVI on the 2nd day of October 2016 at Rakiraki in the Western Division assaulted SHARON MATAI thereby causing her actual bodily harm.

COUNT 2

Statement of Offence

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

Particulars of Offence

INOKE SALAYAVI on the 2nd day of October 2016 at Rakiraki in the Western Division penetrated the vagina of SHARON MATAI with his fingers.

- [2]. You pleaded guilty to both counts on your own free will when you were represented by a legal counsel. When I explained the consequence of the guilty plea and the tariff range of the sentence, you understood what I explained and maintained your position. I accepted your plea after being satisfied that it was unequivocal, voluntary and free from any influence.
- [3]. On the 3rd of March, 2017 you agreed the summary of facts filed by the State. I found the two counts in the Information proved on facts agreed by you. You were convicted on both counts accordingly. I now proceed to sentence you as follows:
- [4]. The summary of facts filed by the State was that:

On the 2nd day of October 2016 at about 9.00 am at Dranivau Village, your wife was at home when you entered the house and approached her. You started to question your wife alleging her of extra-marital affairs which leads to a heated argument between you and

your wife. You then punched her on the face and then left towards the kitchen. Your wife then lied down on the mattress in the bedroom since she felt body pain as she was three (3) months pregnant at that time.

Whilst your wife was lying down, you returned to her and then pressed her buttocks. She tried to push you away but was unsuccessful as you were strong. You then forcefully spread her legs and forcefully inserted your finger in her vagina and started to poke it. Your wife felt pain in her vagina. Your wife tried to stop you but she could not. After doing this then walked out of the house.

Your wife then reported the matter at the Rakiraki Police Station and she was taken for medical examination at the Rakiraki Hospital. You were then arrested and interviewed under caution. You admitted assaulting and raping your wife.

Maximum Sentence

- [5]. The maximum penalty for Rape is life imprisonment.

Tariff for Rape

- [6]. The tariff for rape in Fiji is well settled. When the victim is an adult, a minimum sentence of 7 years' imprisonment should be imposed.
- [7]. In *Mohamed Kasim v The State* (unreported) Cr. Case No. 14 of 1993; 27 May 1994, Fiji Court of Appeal observed:

“While it is undoubted that the gravity of rape cases will differ widely depending on all the circumstances, we think the time has come for this Court to give a clear guidance to the Courts in Fiji generally on this matter. We consider that in any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be

recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the 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."

[8]. Maximum punishment prescribed for Assault Causing Actual Bodily Harm is imprisonment for 5 years. The tariff ranges from an absolute or conditional discharge to 12 months' imprisonment. (State v. Tugalala (2008) FJHC 78; HAC 025/2008S).

[9]. In State v. Tugalala (*supra*) Justice Shameem said:

"The tariff for this offence appears to range from an absolute or conditional discharge to 12 months imprisonment. The High Court said in Elizabeth Joseph v. The State [2004] HAA 030/04S and State v. Tevita Alafi [2004] HAA 073/04S, that it is the extent of the injury which determines sentence. The use of a pen knife for instance, justifies a higher starting point. Where there has been a deliberate assault, causing hospitalization and with no reconciliation, a discharge is not appropriate. In domestic violence cases, sentences of 18 months imprisonment have been upheld (Amasai Korovata v. The State [2006] HAA 115/06S."

[10]. Statistics for domestic violence in Fiji are always awful. For some spouses, this can include rape. Most of the cases do not come to light because some victims think the sustainability of marriage is far more important and don't take trouble to complain. Some of them remain passive partners due to ignorance, shame, fear

or cultural taboos. It is incredible to think before 1992, that a man could rape his wife. The wife was deemed to consent to sexual intercourse on marrying the husband. In R v R [1992] AC 599 the House of Lords recognized the sexual autonomy of a spouse within institution of marriage and the requirement for the prosecution to prove that sexual intercourse had taken place outside marriage was abandoned.

[11]. State v Ismail [2014] FJHC 628; HAC115.2012 (26 August 2014) Janaka Bandara J observed:

“The law pertaining to “Rape” is well settled in this jurisdiction. When the victim is over thirteen (13) years, ‘consent’ is an essential element to have sexual intercourse. In other words, what matters is the “consent”, but not the “relationship” the perpetrator shares with the “victim”. In the eyes of the Law, irrespective of their gender, everybody is equal and treated equally. A spouse is of no exception. If a wife is compelled to have sexual intercourse or oral or anal sex against her will by the use of authority, force or by threat of using force, she has a right to say ‘NO’ to such sexual demands of a husband. If the husband decides to proceed ahead despite of that ‘NO’, he risks of being criminally liable for raping his own wife”.

[12]. This sentence is passed not only to denounce your offending and punish you. But also to send a clear message to the society that marital rape, the worst form of domestic violence is no longer tolerated in Fiji. When sexual intimacy is egoistically used to despoil marital union in order to advance a felonious urge for coitus by force, violence or intimidation, the court will step into protect sanctity of marriage, vindicate justice and protect our laws and State policies.

[13]. You committed these offences on your wife who was three months pregnant at that time. You also used violence on her in addition to the digital penetration, an act in itself constituted violence. A man who penetrates his wife without her consent commits sexual violence in a domestic relationship. Marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. Having considered high culpability factors and the harm caused to the victim, I take 9 years as the starting point for the offence of Rape Count before taking into consideration the aggravating and mitigation factors.

Aggravating factors

[14]. You breached the trust the complainant placed on you in that she trusted you as her husband.

[15]. You committed this offence whilst on license.

[16]. You exploited the vulnerability of your pregnant wife.

Mitigating Factors

[17]. I take into account the mitigating factors submitted on your behalf. You are a first offender. You are a 42 years old farmer and you look after your family. You are a father of three children and your wife is expecting the fourth child.

[18]. You co-operated with the police.

[19]. You admitted the offences at the caution interview and pleaded guilty to the

charge at the first available opportunity. In doing so, you saved precious time and resources of this court and also saved your wife from going through the ordeal again in this court. You seek forgiveness of this Court and of your wife. Your wife indicated to this Court that she accepted the apology you tendered. I accept your remorse as genuine.

[20]. I understand the difficult situation your wife and children are getting into when they are separated from you. Your dependents should not suffer and be punished for the wrong you have committed. However, I have no other option than to apply the law and sentencing principles of this country and send you to a correction centre. However, I have considered this mitigating factor into consideration in deciding your non- parole period.

[21]. I add two years to the starting point of nine years' for aggravating factors bringing the interim sentence to 11 years. I deduct three years for your mitigating factors mentioned above.

[22]. Now your sentence for the Rape count is 8 years' imprisonment.

[23]. I took same mitigating factors discussed above into consideration in deciding your sentence for the offence of Assault Causing Actual Bodily Harm.

[24]. I sentence you to 6 months imprisonment for the offence of Assault Causing Actual Bodily harm in Count No. 2.

[25]. Therefore your final sentence is:

Count No. 1 – Assault Causing Actual Bodily Harm – 6 months imprisonment

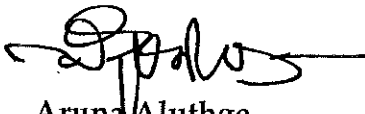
Count No. 2 – Rape - 8 years' imprisonment.

[26] Both sentences in Counts No. 1 and 2 are to run concurrently.

[27]. Your non-parole period will be five years. You will be eligible for parole after five years.

[28]. 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge
Judge

At Lautoka

17th March 2017

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Accused