

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 100 OF 2014

STATE

v

RATU MELI SUGUTA

Counsel: Ms. S. Kiran with Mr. Seruvatu for State

Accused tried in absentia

Date of Judgment: 26th October, 2017

Date of Sentence: 02nd November, 2017

SENTENCE

1. The accused was convicted on following counts at a trial proceeded against him *in absentia*.

COUNT 1

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

RATU MELI SUGUTA, on 13th day of June 2014 at Nadi in the Western Division, unlawfully and indecently assaulted **DIULA BURUTABUA KOROI** by licking the vagina of the said **DIULA BURUTABUA KOROI** with his tongue.

COUNT 2

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

RATU MELI SUGUTA, on 13th day of June 2014 at Nadi in the Western Division, penetrated the vagina of **DIULA BURUTABUA KOROI** with his penis without the consent of the said **DIULA BURUTABUA KOROI**.

2. The facts of this case were that, on the date of the incident, the complainant, after drinking alcohol with her boyfriend, friends and stepfather, at his stepfather's house, went to sleep on a mattress in the living room. The complainant suddenly woke up when she felt someone licking her vagina and thought it was her boyfriend. When she reached down, she touched a bald head and realized that it was not her boyfriend. She recognized the accused, her stepfather, licking her vagina. The accused then lifted her legs up and inserted his penis into her vagina without her consent. The complainant was scared. Soon after the incident, she went to the police station and reported the matter.
3. Rape is a serious crime and considered as the most serious offence committed against privacy and human dignity. The law makers of this country have prescribed the maximum sentence of life imprisonment for those found guilty of Rape.
4. Rape and Sexual Assaults are prevalent in Fiji and have to be eliminated. The offenders must be punished to denounce rape and kindred offences. A clear message must be sent to the community that no such actions will be tolerated by courts.

5. The tariff for adult rape is well settled. The starting point for adult rape is seven years' imprisonment *Kasim v The State* (Crim App. No. AAU0021j of 1993S) and the tariff ranges from 7 to 15 years' imprisonment (*State v Marawa* [2004] FJHC 338).
6. The maximum penalty for Sexual Assault is 10 years' imprisonment. In *State v Epeli Ratabacaca Laca*, HAC 252 of 2011, Justice Paul Madigan set the tariff for the offence between 2 and 8 years imprisonment, the higher tariff being set for serious sexual assaults.
7. Having considered the Legal Guidelines for Sentencing in the United Kingdom, Justice Madigan, in *Laca* (supra), divided Sexual Assault offending into three (3) 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

8. Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).
9. Licking of a vagina falls into category 2(ii) above.
10. In selecting the starting point, the Court must have regard to the objective seriousness of the offence. I am mindful of the guideline set down in *Koroivuki v*

State [2013] FJCA 15; AAU0018.2010 (5 March 2013). Considering the gravity and impact on the victim, I pick a starting point of 8 years from the lower end of the tariff for Rape count and 3 years for Sexual Assault count.

11. **Aggravating Circumstances**

It is highly aggravating that accused violated the domestic relationship. Accused is the stepfather of the complainant. He breached the trust.

Accused knew that the complainant and her boyfriend were drunk and fast asleep. He also knew that complainant's mother was away in the USA. He exploited complainant's vulnerability.

The age gap between the accused and the complainant is more than 20 years.

According to the Victim Impact Statement, complainant suffered physical injury and pain. She had to abandon her studies after this incident. She will suffer psychology for the rest of her life.

12. **Mitigating Circumstances**

Accused had no previous convictions. Therefore I consider the accused to be a first offender. He had maintained a good character.

13. I increase the sentence for Rape count by 3 years to reflect aforementioned aggravating features bringing the interim sentence to 11 years' imprisonment. I deduct 2 years to reflect mitigating circumstances. The sentence I impose for Rape count is 9 years' imprisonment.

14. Having considered the above aggravating and mitigating circumstances, I impose a sentence of 2 years' imprisonment for Sexual Assault count.

15. Having considered the totality and one transaction principles, I order both sentences to be served concurrently.

16. Having considered the decision in Tora v State Crim. App. No. AAU 0063 of 2011 (27 February 2015), and the fact that accused is a first offender, I fix a non-parole period of 7 years. Accused is eligible to parole after 7 years in prison.

17. Summary

Count 1 2 years' imprisonment

Count 2 9 years' imprisonment

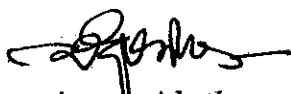
Both sentences to be served concurrently

18. In total, accused is sentenced to 9 years' imprisonment with a non-parole period of 7 years.

19. This sentence must come into effect from the date of accused's arrest.

20. 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

At Lautoka

02nd November, 2017

Solicitors: Office of the Director of Public Prosecution for State
Accused sentenced *in absentia*