

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. 220 of 2013

STATE

V

VILIAME WAQANIVATU

Counsel : Ms. S. Kiran for the State
: Ms R. Varasikete with Mr. E. Maope for the
accused.

Dates of Trial : 19th and 20th February 2018

Date of Judgment: 21st February 2018

Date of Sentence: 23rd February 2018

SENTENCE

- 1.] The accused has been convicted after trial in this Court of one count of rape and one count of Attempting to Pervert the course of justice.

- 2.] The brief facts of the case are that on the 27th October 2012, the accused who was at the time a serving police officer, met the victim Mere (not her real name) in a Nadi nightclub in the very early hours of the morning. He persuaded her to go with him to his quarters at the Namaka Police Station, on the pretext of

getting more money but when they got there he raped her in one of the single officers” quarters which was vacant at the time.

- 3.] In the following few days he, his wife and a policeman friend persistently tried to get Mere to withdraw her complaint which she refused to do.
- 4.] The maximum penalty for Rape is life imprisonment and the tariff for rape of an adult is a term of imprisonment of between 7 and 15 years (**Marawa** [2004] FJHC 338.).
- 5.] In mitigation, counsel tells me that he is 40 years old, married with 2 children, aged 12 and 6. He has been the sole breadwinner for his family and he supports his parents who live in the village. Ever since October 2012 his Police Force salary has been interdicted and has had to support his family on \$25 per week.
- 6.] The accused asked to be allowed to mitigate on his own behalf, which the Court allowed. In a passionate and pathetic submission he told the Court how much he had been suffering for the last 5 years and that the delay in bringing this trial to hearing has caused him so many difficulties. His bail restrictions have effectively kept him under house arrest with little money.
- 7.] The accused has a clear record and he spent 3 months in custody before being admitted to bail.
- 8.] I take a starting point for the rape of 10 years imprisonment. There are no aggravating features.

- 9.] His family circumstances are of no mitigatory value. A father of two very young children at the time should not have been out drinking at 3am in the morning. In his submission, it was all about how he had suffered, but not one word of remorse as to the effect his abuse would have had on the young woman. This Court is aware however of the delay in getting this matter to trial, a delay which has caused more hardship to the accused than normally would be the case. Allowance must be made for that.
- 10.] I deduct 12 months from the sentence for his clear record and time spent in custody and a further year to reflect the hardship occasioned by the long delay in bringing this matter to trial.
- 11.] For the rape, he is sentenced to as term of imprisonment of 8 years and is to serve a minimum of 7 years before he is eligible for parole.
- 12.] The maximum penalty for an attempt to pervert the course of justice is imprisonment for 5 years.
- 13.] There is very little precedent to guide a sentencing court for this offence, but the relatively low maximum would suggest a term in the range of 12 to 36 months. Attempts to prevent a witness from giving true evidence would attract terms at the low end of that band but more sophisticated attempts to subvert the judicial process would attract sentences at the higher end of the band.
- 14.] For this rather unsophisticated attempt to have a complaint withdrawn I take a starting point of 15 months imprisonment. The attempt to have the complainant's sister influence the

withdrawal is an aggravating feature and for that I add a further 3 month's imprisonment. The clear record and time in custody have been reflected in the rape sentence.

15.] I order that the accused serve 18 months imprisonment for the offence, a term to be served concurrently with the rape sentence.

16.] There are no exhibits to be dealt with.

17.] **Orders:**

1. The accused is sentenced to 8 years imprisonment with a minimum term of 7 years for the rape offence.
2. He is to serve 18 months for the attempt to pervert the course of justice, a term to be served concurrently with the rape offence.



**P.K. Madigan
Judge**

At Lautoka High Court

23rd February, 2018