

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 081 OF 2012

STATE

VS

JOVESA SADRATA

Counsel : Mr M. Vosawale and Ms U. Tamanikaiyaroi for the State

: Ms S. Ratu for the Accused

Dates of Trial : 13th – 16th March 2017

Summing Up : 17th March 2017

Judgment : 20th March 2017

Sentence : 22nd March 2017

SENTENCE

[1] The accused, JOVESA SADRATA, after being convicted to a count of Rape, contrary to Section 207(1) and(2)(b) of the Crimes Decree No. 44 of 2009, is to be sentenced by this Court.

- [2] The trial against the accused proceeded in his absence as he opted to abscond. He had sufficient notice of the proceedings against him. During the trial the complainant and a substitute medical officer gave evidence for the prosecution while the Counsel for the accused indicated that, in the present circumstances, that her client exercises his right to remain silent.
- [3] At the conclusion of the trial; having reviewed the evidence and it's summing up to the assessors, this Court decided to accept their majority opinion and found the accused guilty and convicted him to the said count of Rape.
- [4] The following facts were proved during the trial:
- (i) *The complainant met the accused at Ritz club and had consumed alcohol with him. Then they went to Valelevu. The complainant then had consensual vaginal intercourse with the accused near a creek. Then the accused asked her to turn over to continue but he inserted his fingers into her anus. She did not consent to this act.*
 - (ii) *The medical officer noted a 2 cm laceration at the margin of her anus and also a blood clot under her skin. The laceration could not be observed fully as the complainant was in severe pain.*
- [5] According to Section 207(1) of the Crimes Decree No. 44 of 2009, the maximum punishment for Rape is imprisonment for life. It is a serious offence.
- [6] The tariff for Rape of an adult is well settled since the Judgment of Justice Gates (*as he was then*) in **State v Marawa** [2004] FJHC 338. The starting point of imprisonment for Rape of an adult is 7 years. The tariff is between 7 years to 15 years.
- [7] In **Mohammed Kasim v The State** (*unreported*) Fiji Court of Appeal Cr. Case No. 14 of 1993; of 27 May 1994, the Court of Appeal observed thus:
- "We consider that at any Rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years."*
- [8] In determining the starting point within the said tariff, Goundar J, in **Koroivuki v State** (Criminal Appeal AAU 0018 of 2010) has formulated the following guiding principles;;

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. "

[9] Considering the nature of offending and in the light of the above guiding principles, I commence his sentence at 7 years of imprisonment for the count of Rape.

[10] The aggravating factors are:

- (i) *Opportunistic planning;*
- (ii) *The complainant sustained injury to her anus;*
- (iii) *The victim was emotionally and socially traumatised due to this incident.*

[11] I add 3 years for the above aggravating factors. Now his sentence is 10 years.

[12] The mitigating factors are:

- (i) *The accused is a first offender;*
- (ii) *The accused is a 26 year old farmer;*
- (iii) *His previous good character.*

[13] I deduct 2 years for the above mitigating factors. Now the sentence is 8 years.

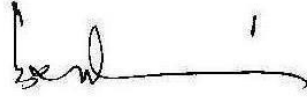
[14] The accused was in remand for this case for 135 days and this Court takes it as a period of six months.

[15] I deduct the said six months from the period of imprisonment on the accused. His final sentence, therefore, is 7 years and 6 months of imprisonment.

[16] Considering Section 18 (1) of the Sentencing and Penalties Decree, and as per the judgment of the Court of Appeal in **Tora v The State** Crim. App. AAU 0063/2011, I impose a 5 year non- parole period on the sentence.

[17] The accused is therefore sentenced to 7 years and 6 months of imprisonment. The accused will not be eligible for parole until he completes serving 5 years of his term of imprisonment.

[18] The accused has 30 days to appeal to the Court of Appeal.



ACHALA WENGAPPULI
JUDGE



At Suva

This 22nd Day of March 2017

Solicitor for the State : ***Office of the Director of Public Prosecution, Suva***
Solicitor for the Accused : ***Legal Aid Commission***