

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 111 OF 2012

BETWEEN : STATE

AND : EPELI SAUKURU

Counsel : Mr. A. Singh for State
Ms L. Tabuakuro for the First Accused
Mr T. Ravuniwa for the Second Accused

Date of Hearing : 30th August 2016 to 31st August 2016
1st September 2016 to 5th September 2016
15th September 2016 to 23rd September 2016

Date of Closing Submissions : 26th September 2016

Date of Summing Up : 3rd October 2016

Date of Judgment : 7th October 2016

Date of Sentence : 17th October 2016

SENTENCE


1. Mr. Epele Saukuru, you have been found guilty and convicted by this court for one count of Rape, contrary to Section 207 (1) and (2) (a) of Crimes Decree, which carries a maximum penalty of imprisonment of life, and one count of Assault With Intent to Commit Rape, contrary to Section 209 of the Crimes Decree, which carries a maximum penalty of imprisonment of ten years.

2. It was proved at the conclusion of the hearing, that you consumed alcohol with the victim, the first accused and few others at the house of one Joji on the 25th of August 2012. After the drinking party, you, the first accused, the victim and one Sitiveni went to the Nawaka River to drink more beer. While drinking beer, you pulled and dragged the victim to the nearby bush and forcefully removed her cloths. She got injured while she was dragged to that place. You then forcefully inserted your penis into her vagina and had sexual intercourse without her consent. The victim was seventeen years old at the time of this alleged incident took place.
3. Rape is a crime that has no place of acceptance in any civilised society. It is a worse form of physical and psychological infringement of a person's life. It is not only an attack on oneself, but also an attack on acceptable values and norms of our society. The impact of such crimes, could adversely change the life of the victim and all of her family forever. The prevalence nature of the occurrence of such crimes, specially targeting juvenile and young adolescence has become a social menace in our society.
4. Having considered Section 4(1) of the Sentencing and Penalties Decree and the serious nature of this offence, it is my opinion that the purpose of this sentence must be founded on the principle of deference and protection of the community. Offenders of this nature must be punished with severity in order to demonstrate that the court of law has no tolerance or sympathy for such offenders.
5. Hon. Chief Justice Gates in Anand Abhay Raj vs State [2014] FJSC 12; CAV0003.2014 (20 August 2014) held that the tariff for rape of a child is between 10 -16 years' imprisonment period.

6. The tariff for the offence of Assault with Intent to Commit Rape is 1 to 4 years (**Justice De Silva in Jone Tabaka, Criminal Case Appeal No 5 of 2013**).
7. The victim states in the Victim Impact Report filed by the prosecution that this crime adversely effected in her life both psychologically and physically. You have forcefully dragged her to the place where you rape her. The victim has suffered lacerations and abrasions around her abdominal area and upper thighs. Having considered the serious nature of this crime and the level of harm and culpability of the offending, I select thirteen (13) years as the starting point for the offence of rape. I select three (3) years for the count of Assault with Intent to Commit Rape.
8. It was proved at the conclusion of the hearing, that you took advantage of the vulnerability of the victim to satisfy your sexual gratification. She was at a place where she has never been before and was drunk as she had been drinking since the previous night. You found that she was weak and was forcefully raped by the first accused. You took the advantage of the situation and dragged her to the place where she was initially raped by the first accused. You then committed this crime on her without any remorse or respect to her. Hence, I find this is an opportunistic crime. I consider these facts as aggravating circumstance of these offences.
9. The learned counsel for the second accused in his submissions stated that you are remorseful of committing this crime. However, I do not find any material that substantiates such remorsefulness.

10. You are a thirty two (32) years old farmer. You are married. You have one daughter. However, your family and personal background has less mitigatory value in offences of this nature.
11. You are a first offender. Hence, you are entitled for a substantial discount for your previous good character.
12. Having considered the above discussed aggravating factors, I increased two (02) years, reaching to an interim imprisonment of fifteen (15) years for offence of rape.
13. In respect of the count of Assault with Intent to Commit Rape, I increase one (01) year to reach four (04) years of interim imprisonment period.
14. Having considered you previous good character, your relatively young age I reduce two (02) years, making your final sentence as thirteen (13) years of imprisonment period.
15. In respect of the offence of Assault with Intent to Commit Rape, I reduce one (01) year, making the final sentence of three (03) years imprisonment period.
16. You had not been in remand custody prior to this sentence. Therefore you are not entitled for any reduction pursuant to Section 24 of the Sentencing and Penalties Decree.
17. Having considered the seriousness of the offence and possibilities of rehabilitation, it is my opinion that a period of eleven (11) years of non-parole period would serve the purpose of this sentence.

18. I accordingly sentence you for a period of Thirteen (13) years of imprisonment for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree and Three (03) years imprisonment period for the offence of Assault with Intent to Commit Rape Contrary to Section 209 of the Crimes Decree. Both sentences to be served concurrently. Moreover, you are not eligible for any parole for a period of eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Decree.
19. Thirty (30) days for appeal to the Fiji Court of Appeal.


R. D. R. Thushara Rajasinghe
Judge

At Lautoka
17th October 2016



Solicitors : **Office of the Director of Public Prosecutions**
 Messrs K Law for the First Accused person
 Messrs MIQ Lawyers for the Second Accused person