

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No: HAC031 of 2012**

**BETWEEN** : **THE STATE**  
**AND** : **MOHAMMED IBRAHIM**  
**BEFORE** : **HON. MR. JUSTICE PAUL MADIGAN**  
Counsel : Ms P. Lo for the State  
Mr. P. Lomaloma for the accused  
Dates of conviction : 24 May 2013  
Date of sentence : 28 May 2013

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**SENTENCE**

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- [1] Mohammed Ibrahim has been found guilty after trial and convicted on one count of rape contrary to s.207(1) and (2)(a) of the Crimes Decree 2009.
- [2] The unusual facts of the case are that on the 14<sup>th</sup> April 2012 the accused had arranged to meet the victim, under the mango tree at Tuatua, Labasa. This was an arrangement that they had made many times before. He was a truck driver coming almost weekly to Labasa bringing goods to a supermarket and she was a cashier in that market.
- [3] They had an agreement that she would provide sexual services for him in return for gifts of money, which he paid into her bank account or gave her cash when meeting. So on this day it was expected by both that this arrangement would continue. He picked her up at about 8pm and drove her in his truck to an isolated roadside site in Wailevu

Tiri. There they had a dispute over whether to eat the food he had brought first and then sex, or to have sex then eat. The victim wanted to eat first but he insisted that they have sex immediately. He forcibly took her clothes off and made her lie in the back of the cabin and raped her. She was insistent that she didn't want sex at that time, or in that manner and she told him so, but he didn't listen.

- [4] In law, rape is sexual congress without consent, and it is quite irrelevant that they had a previous history of sexual activity and that there was a commercial agreement in place to provide sex for money. Their history of paid sexual encounters certainly does not preclude her from withholding consent to an act of intercourse at any one particular time. And so it was on this particular evening.
- [5] The maximum penalty for rape is life imprisonment and the authorities dictate that the rape of an adult must attract a sentence of at least 7 years.
- [6] In mitigation of the offence, Counsel for the accused submits that his client should be viewed as having a clear record. He had several minor convictions before 1993 with nothing similar and I do therefore accept that he has no previous convictions. He submits that he regrets this episode, although he showed no signs of remorse during the trial.
- [7] He is 53 years old and has worked as a truck driver all his working life. He is divorced and has 3 adult children. He cares for his 75 year old mother who lives in Nadi. He asks for leniency considering that this was "date rape" and happened within a commercial sexual relationship. He points out that there is no evidence of violence having occurred.

[8] The State in a written sentencing submission submits that despite the fact that this was an on-going commercial arrangement the accused has breached the lady's trust by forcing her to have sex when she was unwilling to.

**Analysis**

[9] The fact that this was a sex for money arrangement is totally irrelevant. It is also irrelevant that both parties knew that there would be sexual activity between them that evening. As soon as the accused penetrates the victim when she is not willing and she tells him so, then his act is without doubt an act of rape.

[10] I agree with counsel for the State that there is an element of breach of trust disclosed here although not nearly as seriously as would be between close family members. A commercial agreement for sexual services having been made between them does not allow the accused an absolute and unconditional right to sex at any time. Every sex worker has the right to say "no" or in this case "not now".

[11] I take as a starting point a term of seven years imprisonment. To that I add two years for the breach of trust of their relationship. I deduct 12 months for his mitigation of family hardship and for his technical clear record and the total sentence that the accused will serve for this crime is one of 8 years imprisonment. He will serve a minimum term of 6 years before being eligible for parole.

Paul K. Madigan  
**JUDGE**

At Labasa  
28<sup>th</sup> May 2013