

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

CRIMINAL CASE NO: HAC 320/2011

BETWEEN: THE STATE

AND: ISIMELI RONAUVUTUKALOU

COUNSEL: Ms A Vavadakua for the State
Mr N Sharma for the Accused

Date of Trial: 01-03/07/2013

Date of Summing-Up: 05/07/2013

Date of Judgment: 08/07/2013

Date of Sentence: 11/07/2013

[Name of the victim is suppressed. She will be referred to as NM]

SENTENCE

01. Isimeli Ronavutukalou has been found guilty after trial and convicted on one count of Rape contrary to section 207(1) and (2)(a) of the Crimes Decree 2009.
02. According to the victim on 31/08/2011 she had gone to Naisogo Village to see her daughter who was looked after there. When she got off the bus it was dark. As her house is little far from the road she started to walk. On the way she had met the accused, Emoni and two other boys and she requested from Emoni whether he could come with

her up to her house. He agreed and all walked up to a bridge. At the bridge accused told Emoni that he was going to drop the victim. At that time victim wanted to relieve herself. When she was about to wear her undergarment after relieving herself the accused came there and grabbed her hand put her down on the grass and raped her. She never consented for sex with the accused at that time.

03. In this case the accused took up the position that he had sex with the victim with consent and therefore denied charge.
04. As per section 207(1) (2) (a) of the Crimes Decree No: 44 of 2009 the maximum sentence for an offence of Rape is to imprisonment for life.

Tariffs for Rape

05. In the case of **Chand v State** [2007] AAU005. 2006S (25 June 2007), the court referred to the case of **Mohammed Kasim v The State** Appeal 14 of 1993 where the same court observed:

“We consider that any rape case without aggravating or mitigating feature the starting point for sentencing an adult should be a term of imprisonment of 7 years. It must be recognized by the courts that the crime of rape has become altogether too frequent... the sentences imposed by the courts for that crime must...reflect an understandable public outrage”

In **Sireli v State** [2008] FJCA 86; AAU0098 of 2008S (25 November 2008). The court also referred to the case of **State v Lasaro Turagabeci & others** HAC 0008 of 1996, the court observed:

“The courts have made it clear that rapist will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences.

It violates and degrades a fellow human being. The physical and emotional consequences of the victim are likely to be severe. The courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentence”.

06. The accused is 24 years of age and looks after his wife. He is a farmer and educated up to form 4. He is a first offender.
07. In **O’Keefe v State** [2007] FJHC: 34 the Fiji Court of Appeal held that the following principle of sentencing:

“When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person”

08. I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially those of the sections set out below in order to determine the appropriate sentence.

09. Section 15(3) of the Sentencing Decree provides that:

“as a general principle of sentencing, a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the objectives of sentencing stated in Section 4, and sentence of imprisonment should be regarded as the sanction of last resort taking into account all matters stated in the General Sentencing Provisions of the decree”.

10. The objectives of sentencing, as found in section 4(1) of the Decree, are as follows:

1. To punish offenders to an extent and a manner, which is just in all the circumstances;
2. To protect the community from offenders;
3. To deter offenders or other persons from committing offences of the same or similar nature;
4. To establish conditions so that rehabilitation of offenders may be promoted or facilitated;
5. To signify that the court and the community denounce the commission of such offences; or
6. Any combination of these purposes.

11. Section 4(2) of the Decree further provides that in sentencing offenders, a court must have regarded to:

- (a) The maximum penalty prescribed for the offence;
- (b) Current sentencing practice and the terms of any applicable and guideline Judgments;
- (c) The nature and gravity of the particular offence;
- (d) The defender's culpability and degree of responsibility for the offence;
- (e) The impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;
- (f) Whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

12. Now I consider the aggravating factors:

1. The accused is a relation of the victim.
2. The accused under the guise of providing protection on her way home raped the victim.
3. The accused showed total disregard to the victim's right to a peaceful life by committing this offence.

13. Now I consider the mitigating circumstances:

- (a) Accused is 24 years and a young offender.
- (b) He is married and looks after his young wife.
- (c) He is a first offender.
- (e) He is remorseful.
- (f) He does community service and helps elders and other needy people.

14. Considering all aggravated and mitigating circumstances I sentence you as follows:

I take 07 years imprisonment as the starting point. I add 03 years for aggravating factors to reach the period of imprisonment at 10 years. I deduct 02 years for the mitigating factors.

15. In summary you are sentenced to 08 years imprisonment.

16. Acting in terms of section 18(1) of the Sentencing and Penalties Decree, I impose 06 years as non-parole period.

17. 30 days to appeal.

P Kumararatnam

JUDGE

At Suva
11th July 2013

