

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 346 OF 2011S

STATE

VS

FRANK KONARE

Counsels : **Mr. J. Niudamu and Ms. R. Uce for the State**
Mr. S. Waqainabete for Accused
Hearings : **5th, 6th and 7th August, 2013**
Summing Up : **8th August, 2013**
Judgment : **9th August, 2013**
Sentence : **12th August, 2013**

SENTENCE

1. In a judgment delivered on 9th August 2013, you have been found guilty and convicted of the following offences:

COUNT 1

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

FRANK KONARE on the 16th day of October 2011, at Jittu Estate, Samabula in the Central Division, penetrated the anus of **I. D** with his penis without the consent of the said **I. D**.

COUNT 2

Statement of Offence

BURGLARY: Contrary to section 312 (1) of the Crimes Decree 44 of 2009.

Particulars of Offence

FRANK KONARE on the 16th day of October 2011, at Jittu Estate, Samabula in the Central Division, entered into the dwelling house of **I. D** as a trespasser with intent to commit theft of a particular item of property from the said house.

COUNT 3

Statement of Offence

THEFT: Contrary to section 291 (1) of the Crimes Decree 44 of 2009.

Particulars of Offence

FRANK KONARE on the 16th day of October 2011, at Jittu Estate, Samabula in the Central Division committed theft by dishonestly appropriating 1 x INK Mobile Phone valued at \$149.00, the property of **SALESITINO NAEQE**.

2. The brief facts were as follows. You returned from the night club drunk on 16th October 2011, after 4 am, and unlawfully entered the complainant's house, by climbing through her window. You then entered her bedroom without her permission. She was asleep. You forcefully laid on top of her and raped her. She resisted to no avail. You were stronger than her, and you completely subdued her, by assaulting her. You then turn her around and raped her again. After that, you stole a mobile phone, wiped yourself with a towel, and left the house by slamming the kitchen door.

3. Rape carries a maximum sentence of life imprisonment. Previous case laws had established the tariff between 7 to 15 years imprisonment.
4. Burglary carries a maximum sentence of 13 years imprisonment. Previous case laws established the tariff as a sentence between 18 months to 3 years imprisonment.
5. Theft carries a maximum sentence of 10 years imprisonment. Previous case laws established the tariff as a sentence between 2 months to 3 years imprisonment, depending on the circumstances of the case. In any event, the final sentence will depend on the mitigating and aggravating factors.
6. The aggravating factors, in this case, were as follows:
 - (i) Serious breach of trust. The accused and the complainant attend the same church, thus are known to each other. The accused was a pastor in their church. A pastor is supposed to be a “leading light” in a church group. However, when you committed these offences on the complainant, you seriously breached the trust she had in you.
 - (ii) Rape offence. The way you committed the offence against the complainant, showed your utter disregard to the right of the complainant. You first broke into her house, between 4 am and 5 am in the morning, through her window, when she and her children were fast asleep. Then you forced yourself on her by raping her. Your behaviour were totally uncalled for.
 - (iii) After committing the above offences, then you stole the mobile phone in her house, and slam the door, when you left.
 - (iv) You have shown a total disregard to the happiness of this family, and you must accept that you will have to pay by forfeiting your liberty.
7. The mitigating factors, were as follows:
 - (i) You are 23 years, single with no children;
 - (ii) At the age of 23 years, this is your first offence;
 - (iii) You previously supported your sickly mother;
 - (iv) You were the sole bread winner, working as a security guard, earning \$100 per week;

- (v) The stolen mobile phone was recovered;
 - (vi) You have been remanded in custody since 24th October 2011, that is, approximately 1 year 10 months ago.
8. On the rape charge (count no. 1), I start with 10 years imprisonment. I add 5 years for the aggravating factors, making a total of 15 years imprisonment. I deduct 7 years for the mitigating factors, leaving a balance of 8 years imprisonment.
9. On the burglary charge (count no. 2). I start with 2 years, add 1 for the aggravating factors, making a total of 3 years. I deduct 1 year for the mitigating factors, leaving a balance of 2 years imprisonment.
10. On the theft charge (count no. 3), I sentence the accused to 1 year imprisonment.
11. In summary, your sentence are as follows:
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|-------|-------------|---|----------|---|----------------------|
| (i) | Count No. 1 | : | Rape | : | 8 years imprisonment |
| (ii) | Count No. 2 | : | Burglary | : | 2 years imprisonment |
| (iii) | Count No. 3 | : | Theft | : | 1 year imprisonment |
12. Because of the principle of “totality” of sentences, the above sentences are concurrent to each other, that is, a total sentence of 8 years imprisonment. The accused is to serve a non-parole period of 5 years.
13. The female complainant’s name is permanently suppressed to protect her privacy.

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JUDGE

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