

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

**CRIMINAL CASE NO: HAC 332/2011**

**BETWEEN:** THE STATE

**AND:** SAMISONI RASIGA

**COUNSEL:** Mr L Fotofili and Mr A Datt for the State

Mr R Vananalagi for the Accused

**Dates of Trial:** 02-14/10/2013

**Date of Summing Up:** 16/10/2013

**Date of Judgment:** 16/10/2013

**Date of Sentence:** 18/10/2013

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

## **SENTENCE**

- [1] Samisoni Rasiga has been found guilty after trial and convicted on three counts of Rape contrary to Sections 207(1)(2)(a)(b) and (c) of Crimes Decree No: 44 of 2009.
- [2] The victim had come from England and was engaged as a volunteer teacher at Taviya District School. While she was speaking to her mother over the phone, the accused blind folded her and committed rape on her. She was under his custody for about two hours. After the rape the accused threatened her with death. Due to this tragic incident now the victim is under medication for depression. This incident had ruined her university education. According to

her accused forcefully had vaginal and oral sex and poked his finger into her vagina which was painful.

- [3] This incident came to light when the accused told this to Vilawa Labati a close relation of him. The accused vividly explained to him how he dragged the victim to a slope and had sexual intercourse forcibly. Vilawa Labati had told this to his brother Livai Koroduadua who then told this to the Levuka Police.
- [4] As per the victim impact report victim suffered physical injuries due to the incident. She is psychologically affected and presently under treatment for depression. She often has terrifying nightmare relating to this incident. She has lost concentration of her university education.
- [5] Accused denied the charges and took up the defence of alibi.
- [6] As per Sections 207 of Crimes Decree 2009 any rape carries a maximum sentence of life imprisonment.

### **Tariffs for Rape**

- [7] 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 and the sentences imposed by the courts for that crime must reflect an understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point.”*

- [8] 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 and 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”.*

[9] The accused is 23 years of age and studied up to Class 8. He lives with his parents and helps his father in subsistence and commercial farming of dalo and yaqona. He sells root crops to generate income to buy his family needs.

[10] 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”*

[11] 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.

[12] 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”.*

[13] 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.

[14] 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;

[15] Now I consider the aggravating factors:

1. The accused had threatened the victim with death.
2. Victim was kept incommunicado for about 2 hours.
3. The victim suffered physical, mental and economic loss.
4. The accused showed total disregard to the victim's right to a peaceful life by committing this offence.
5. He was recently sentenced to 10 months imprisonment by Magistrate Court, Suva.

[16] Now I consider the mitigating circumstances:

1. Accused is 23 years old.
2. He has studied up to class 8.
3. He helps his father in subsistence and commercial farming.

4. He has been in remand for nearly one year before being granted bail.

[17] The victim had worked at a supermarket in England to raise money to come Fiji to help innocent children in Fiji. Due to this tragic incident her teaching placement was cut short by over 6-7 months. As a result victim has to re-sit her second year at university, adding on another year to her university education. Her family is emotionally disturbed over this incident.

[18] The victim had come from the opposite side of the world to help innocent children of Fiji. This opportunity was deprived to them due to the brutal conduct of the accused. The accused has brought disrespect to this country.

[19] Considering all aggravated and mitigating circumstances I sentence you as follows:

1. For the first count I take 10 years imprisonment as the starting point. I add 04 years for aggravating factors to reach the period of imprisonment at 14 years. I deduct 02 years for the mitigating factors.

2. For the second count I take 10 years imprisonment as the starting point. I add 04 years for aggravating factors to reach the period of imprisonment at 14 years. I deduct 02 years for the mitigating factors.

3. For the third count I take 10 years imprisonment as the starting point. I add 04 years for aggravating factors to reach the period of imprisonment at 14 years. I deduct 02 years for the mitigating factors

[20] I order you serve the sentence concurrently to each other. In summary you are sentenced to 12 years imprisonment.

[21] The accused was born on 10/09/1992. He was 18 years and 05 months old at the time of offending. He committed the offence just entering his adulthood. Considering this and acting in terms of section 18(1) of the Sentencing and Penalties Decree, I impose 10 years as non-parole period.

[22] 30 days to appeal.

P Kumararatnam

**JUDGE**

At Suva

18/10/ 2013