

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 242/2011

BETWEEN: THE STATE

AND: ISEI KORODRAU

COUNSEL: Ms A Vavadakua for the State
Mr R Vananalagi for the Accused

Dates of Trial: 28-31/10/2013

Date of Summing Up: 01/11/2013

Date of Judgment: 01/11/2013

Date of Sentence: 08/11/2013

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

SENTENCE

- [1] Isei Korodrau has been found guilty after trial and convicted for one count of Rape contrary to Section 207(1)(2)(a) of Crimes Decree No: 44 of 2009.
- [2] The victim, an employee of Home of Compassion, left for work in the early hours on 20/02/2011. The accused waylaid dragged her to a ditch in a slope and committed rape. He mercilessly punched her face several times before he had sex with her forcibly. The victim vividly explained to court how she was raped after she was dragged to a slope.

[3] Accused denied the charge.

[4] As per Section 207 of Crimes Decree 2009 any rape carries a maximum sentence of life imprisonment.

Tariffs for Rape

[5] In the case of **Chand v State** [2007] AAU005. 2006S (25 June 2007), the court referred to the case of **Mohammed Kasim v 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.”

[6] In endorsing the **Kasim** case cited above, the Court of Appeal in **Asaeli Drotini** No: 1 of 2005 stated:

*[15] “The continuing frequency of such cases has resulted in a general increase in the levels of sentences ordered in rape cases by the courts in Fiji. We endorse that trend. We do not suggest that the starting point described in **Mohammed Kasim’s** case should be altered in rape cases in general but the sentencing court should not hesitate to increase the sentence substantially where there are further aggravating factors.”*

[7] 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”.

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

[9] 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

[10] 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.

[11] 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”.

[12] 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.

[13] 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;

[14] Now I consider the aggravating factors:

1. The accused had assaulted the victim causing injuries on her body.
2. Victim was kept under his custody for about 30 minutes.
3. The victim suffered physical and mental trauma.
4. The accused while choosing to go for trial put the victim through the trauma of having to relive the incident.
5. The accused showed total disregard to the victim's right to a peaceful life by committing this offence.
6. The accused has 5 previous convictions.

[15] Now I consider the mitigating circumstances:

1. Accused is 23 years old.
2. He helps his parents in subsistence and commercial farming.
3. He has been in remand for more than 2 years.

[16] Considering all aggravating and mitigating circumstances 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.

[17] In summary you are sentenced to 08 years imprisonment.

[18] The accused was born on 26/06/1991. He was 19 years and 07 months old at the time of offending. He committed the offence just entering his adulthood. Further he has been in remand for more than two years. Considering Sections 18(1) and 24 of the Sentencing and Penalties Decree, I impose 06 years as non-parole period.

[19] 30 days to appeal.

P Kumararatnam

JUDGE

At Suva
08/11/ 2013