

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 329 OF 2011S

STATE

VS

JOELI TAWATATAU

Counsels : **Mr. M. Vosawale for State**
Mr. J. Savou for Accused
Hearings : **3rd, 4th and 5th June, 2013**
Summing Up : **6th June, 2013**
Judgment : **6th June, 2013**
Sentence : **7th June, 2013**

SENTENCE

1. Joeli Tawatatau, yesterday the three assessors and the court, after a three days trial, found you guilty of raping the 21 years old female complainant, at Newtown in the Central Division, on 22nd September, 2011, Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 2009.
2. The brief facts were as follows. You befriended the complainant in March 2011 via a telephone call. You developed a relationship with her. She was 21 years old, you were 36 years old. Your relationship with her went on for the next 6 months. On 22nd September, 2011, you took her to a friend's house in Newtown. You two slept in your friend's bedroom. You asked her for sex. She declined. You continued to ask her for sex. But she continued to decline. You then forced

yourself on her. You delivered two punches to her thighs. You forcefully pressed her head on the bed. You penetrated her. She continued to struggle. You then strangled her. She gave up. You had sex with her for the next five minutes. She did not consent to you having sex with her, at the time, and you well knew she was not consenting to the same.

3. Rape, as an offence, had always been regarded by society as a serious offence, and thus it carries a maximum penalty of life imprisonment. Previous case laws have set the tariff between 7 to 15 years imprisonment. The final sentence will depend on the mitigating and aggravating factors.
4. In your case, the aggravating factors were as follows:
 - (i) The complainant was your girlfriend. She trusted you. Your relationship had been going on for 6 months. On 22nd September, 2011, you abused the trust she had in you. Although you begged her for sex, you had no right whatsoever to override her decision, not to have sex with you. The fact that she was your girlfriend, at the time, gave you no right to have sex with her, without her consent. You abused her, and forcefully imposed your will on her.
 - (ii) You seriously assaulted her, prior to raping her. You punched her thighs twice, forced her head down on the bed and strangled her, in order to subdue her. You had no regard whatsoever for her rights as a person.
 - (iii) You showed no remorse whatsoever, to the end of this case.
5. The mitigating factors were as follows:
 - (i) Although you have 7 previous convictions in the last 10 years, this was your first sex offence;
 - (ii) You have been remanded in custody since 29th September, 2011, when you first appeared in the Nasinu Magistrate Court, that is, 1 year 8 months 8 days ago.
6. I start with a sentence of 7 years imprisonment. I increase the same by 5 years for the aggravating factors, making a total of 12 years imprisonment. For the mitigating factors, I decrease the above by 4 years, leaving a balance of 8 years imprisonment.

7. Joeli Tawatatau, for raping the complainant on 22nd September, 2011, I sentence you to 8 years imprisonment, with a non-parole period of 6 years, effective forthwith.

8. 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**