

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 377 OF 2012S

STATE

VS

IOSEFO KABAURA

Counsels : **Ms. A. Vavadakua for State**
Ms. L. Raisua for Accused

Hearings : **24, 25 and 26 February, 2014**

Summing Up : **28 February, 2014**

Judgment : **28 February, 2014**

Sentence : **3 March, 2014**

SENTENCE

1. On 28 February 2014, the three assessors and the court found you guilty as charged on the following information, and also convicted you of the same:

FIRST COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Decree
No. 44 of 2009.

Particulars of Offence

IOSEFO KABAURA on the 27 day of July 2012, at Dolanabani Settlement in Viria, in the Central Division had carnal knowledge of **M. R**, without her consent.

SECOND COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) and (2) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

IOSEFO KABAURA on the 26 day of July 2012, at Dolanabani Settlement in Viria, in the Central Division, unlawfully and indecently assaulted **M. R**, by licking her vagina.

THIRD COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

IOSEFO KABAURA on the 28 day of July 2012, at Dolanabani Settlement in Viria, in the Central Division, unlawfully and indecently assaulted **M. R**, by sucking her breasts.

FOURTH COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

IOSEFO KABAURA on the 26 day of July 2012, at Dolanabani Settlement in Viria, in the Central Division, assaulted **M. R**, by punching her face, thereby causing actual bodily harm.

2. The brief facts were as follows. In July 2012, the 14 year old female complainant was brought to you, to look after. She joined you, your wife and young son as a family. You claimed to be her father, but she saw you as a guardian. While your wife was away at the Suva market from 26 to 28 July 2012, you began to abuse the complainant. First, you punched her face on the night of 26 July 2012 (count no. 4), thereby giving her a “black eye”. Then you forced yourself on her by licking her vagina (count no. 2). On the night of 27 July 2012, you proceed to rape her (count no. 1), and then sexually assaulted her on 28 July 2012, by sucking her breasts. The matter was reported to police. You were investigated and later charged with the offences mentioned above.

3. I will start with the offence of “rape”, as it was the most serious of all the offences. The courts have repeatedly said that “rape” is a very serious offence. It is the worst form of sexual violation and exploitation. It robs a person of her or his dignity and seriously violates the person’s human right. Consequently, society had prescribed a maximum sentence of life imprisonment. Previous cases laws had prescribed a tariff between 7 to 16 years imprisonment. The final sentence will depend on the aggravating and mitigating factors.

4. “Sexual assaults” carried a maximum sentence of 10 years imprisonment (section 210 (1) of the Crimes Decree 2009) or 14 years imprisonment (section 210 (2) of the Crimes Decree 2009). In **State v Epeli Ratabacaca Laca**, HAC 252 of 2011, High Court, Suva, His Lordship Justice Paul Madigan set the tariff for the offence as a sentence between 2 to 8 years imprisonment. His Lordship proposed the United Kingdom’s guidelines for sentencing on sexual assault. I agree with His Lordship’s views on how to approach sentencing on sexual assaults in Fiji.

5. “Assault causing actual bodily harm” carried a maximum sentence of 5 years imprisonment. Previous case laws had set the tariff between a suspended prison sentence to 9 months imprisonment.

6. The aggravating factors in this case were as follows:
 - (i) Breach of Trust. The accused, 46 years old, was in a position of trust with the 14 year old female complainant. He agreed to look after the complainant, and took her on as part of the family. In fact, he saw the complainant as his daughter yet when his wife

was away in Suva market on 26, 27 and 28 July 2012, he breached the trust the young girl had in him by sexually attacking her. The accused will have to pay for these offences by losing his liberties.

- (ii) By offending against the complainant, the accused showed utter disregard to her human rights and her dignity as a person.

7. The mitigating factors were as follows:

- (i) At the age of 47 years, this is your first offence;
- (ii) He had been remanded in custody for approximately 5 months;
- (iii) Previously supported a wife and young child.

8. On the “rape” charge (count no. 1), I start with 9 years imprisonment. I add 3 years for the aggravating factors, taking the total to 12 years imprisonment. I deduct 2 years for the mitigating factors, leaving a balance of 10 years imprisonment.

9. On the “sexual assault” charge (count no. 2), I start with 4 years. I add 2 years for the aggravating factors, taking the total to 6 years imprisonment. I deduct 2 years for the mitigating factors, leaving a balance of 4 years imprisonment.

10. I repeat the above process and sentence for count no. 3 – sexual assault.

11. On the assault charge (count no. 4), I sentence the accused to 9 months imprisonment.

12. In summary, I sentence you as follows:

- (i) Count No. 1 : Rape : 10 years imprisonment
- (ii) Count No. 2 : Sexual
Assault : 4 years imprisonment
- (iii) Count No. 3 : “ : 4 years imprisonment
- (iv) Count No. 4 : Assault : 9 months imprisonment

All the above sentences are concurrent to each other, that is, a total sentence of 10 years imprisonment.

13. For raping and sexually abusing the complainant, I sentence you Iosefo Kabaura, to 10 years imprisonment, with a non-parole period of 8 years imprisonment, effective forthwith.
14. The name of the complainant is permanently suppressed, to protect her privacy.

Salesi Temo
JUDGE

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