

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 248/ 2011

BETWEEN : STATE

AND : FILIPE LESUDINA

COUNSEL : Mr Y Prasad for the State  
Ms V Tamanisau for the Accused

Date of Hearing : 07/08/2014.

Date of Sentence : 08/08/2014.

[Name of the victim is suppressed. She will be referred to as M.R.)

SENTENCE

[01] The Director of Public Prosecution had preferred the following charge against the accused above named.

**Count One**

*Statement of Offence*

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

*Particulars of Offence*

FILIPE LESUDINA on 22<sup>nd</sup> day of July, 2011 at Vatukalo Village, Levuka in the Eastern Division raped M.R. by inserting his finger into the vagina of the said M.R. without her consent.

- [02] When the Plea was taken up on the 10<sup>th</sup> day of November, 2011 the accused had pleaded not guilty to the charge against him. But on 04/08/2014, when the trial was about to begin, the accused through his counsel informed that he wished to reconsider his plea. Information was read out and explained the charge in both languages. Accused after understanding the charge pleaded guilty to the charge. Accepting the Plea to be unequivocal this court found him guilty and convicted him under Section 207(1) and (2) (b) of the Crimes Decree No: 44 of 2009.
- [03] State Counsel submitted the following summary of facts of which the accused admitted.
- [04] On the 23<sup>rd</sup> day of July, 2011 at around 4.00am in the morning, the victim M.R aged 24 years at that time was sleeping with her three small children at her home at Vatukalo Village in Levuka. Her husband was away as he went to attend a funeral in another village.

The accused who was the brother-in-law of the victim came in to the house of the victim entered her bedroom and inserted his finger into her vagina whilst she was asleep without her consent. The victim woke up alarmed and saw the accused standing in front of her. The victim recognized the accused as her brother-in-law from the light of the sitting room which was filtering into her bedroom. The victim began to shout, however the accused tried to smother the victim and threatened her not to shout or raise any alarm.

The shout of the victim was eventually heard by a neighbor who was also the brother in law of the victim and came to check on the victim from his house. The accused in the meantime ran outside of the house. The victim reported the matter to her neighbor and then to police. The accused was arrested and later charged for the offence of rape Contrary to Section 207 (1) and 207 (2) (b) of the Crimes Decree No. 44 of 2009.

## Tariff for Rape

- [05] 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 more nearly reflect an understandable public outrage”*

- [06] 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, 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”.*

- [07] The accused was born on 16/06/1971 and was 40 years at the time of offending. He is not married but in a de facto relationship. He has a child who is 08 years old. He is a subsistence farmer and at times sells the crops he plants to assist his family.

- [08] Victim was not medically examined thus no medical report filed to assess the injury/injuries sustained by the victim.

- [09] I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially Sections 4(1), 4 (2) and 15(3), to determine an appropriate sentence.



[10] Now I consider the aggravating factors:

1. The victim was 24 years old, a mother of three children at the time of the incident.
2. The victim is the sister-in-law of the accused person.
3. The act done to the victim by the accused person took away the victim's dignity in the society.
4. The accused person has betrayed the bond between a brother-in-law and a sister-in-law.
5. The accused took advantage of the trust that the victim had placed on him as a brother-in-law.
6. The accused person has shattered the close ties of his family, the victim's family and their relatives.
7. The accused has instilled a sense of fear into the victim which may affect her whole life.

[11] Now I consider the mitigating circumstances:

- (a) The accused pleaded guilty before the commencement of the trial and saved court's time.
- (b) By pleading guilty he has saved the victim from having to re-live her ordeal all over again whilst giving evidence.
- (c) Accused was 40 years old at the time of committing the offence. He is now 43 years old and has no record of any previous convictions. He is a first offender.
- (d) He is not married but in a de facto relationship. He has a child who is 08 years old.
- (e) He is the sole bread winner of the family.
- (f) He is remorseful.

[12] Considering all aggravating and mitigating circumstances I take 07 years imprisonment as the starting point. I add three years for aggravating factors to reach the period of imprisonment at 10 years. I deduct 02 years for the mitigating factors. In summary you are sentenced to 08 years imprisonment.

- [13] The accused was arrested on 02/08/2011 and was in remand nearly six months before being released on bail by this court. I deduct this period from the sentence. Now the sentence is 7 years and 06 months imprisonment.
- [14] Considering all and acting in terms of Section 18(1) of the Sentencing and Penalties Decree, 2009 I impose 04 years and 06 months as non-parole period.
- [15] 30 days to Appeal.



  
P Kumararatnam  
JUDGE

At Suva  
08/08/ 2014