

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

**CRIMINAL CASE NO.: HAC 227 OF 2011**

**STATE**

**-v-**

**VIO CAKAU**

**Counsels** : Ms. W. Elo for the State  
Mr. R. Kumar for the accused

**Date of Sentence** : 29 October 2014

(Name of the victim is suppressed she is referred to as TN)

**SENTENCE**

1. The accused was charged before this Court with the following count:

***Statement of Offence***

**Rape**: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

***Particulars of Offence***

**VIO CAKAU** on the 4<sup>th</sup> of December, 2011 at Lautoka in the Western Division, penetrated the vagina of TN with his penis, without her consent.

2. You pleaded not guilty to above charge. Following trial lasting three days in this Court you were found Not Guilty of the above charge but Guilty for Attempted Rape contrary to Section 208 of the Crimes Decree No. 44 of 2009.
3. After considering the unanimous verdict of the assessors and having reviewed the evidence and summing up in this trial, the Court decided to concur with the unanimous verdict of guilty in respect of Attempted Rape and also found you guilty and convicted you for Attempted Rape.

4. The following facts were proven in evidence during the trial. The victim in this case was 23 years old and closely related to you. After drinking party you forcibly covered her mouth and removed her pants. Then you repeatedly punched her on thighs and inserted your penis into her vagina. When a police officer on foot patrol came there hearing the complainant shouting for help, you were found on top of the body of the complainant. She had told the police officer that you were trying to have sex with her. There was no medical evidence regarding the penetration and the complainant admitted that she was drunk at that time. You have stated in the caution interview that you were too drunk to remember what happened.
5. You had no remorse for your above conduct.
6. According to the Crimes Decree the maximum punishment for attempted rape is 10 years imprisonment. It is a serious offence.
7. The tariff for rape is well settled since the Judgment of Hon. Madam Justice Nazhat Shameem in Aunima v State [2001] FJHC 105; HAC 0033J.2001S (27 June 2001). The tariff is 12 months imprisonment to 5 years imprisonment. Her ladyship observed:

*"Applying all these principles, I find that the accepted tariff for Attempted Rape in the Fiji Courts ranges from 12 months imprisonment to 5 years imprisonment. A starting point should then be chosen according to the seriousness of the offending.*

*In the case before me, a starting point of 5 years imprisonment was not appropriate. This was not the most serious offence of its kind. There was no evidence of injuries, extreme youth or age of the victim, or of the use of weapons or gratuitous violence. However, it was clearly not the least serious of its kind, which might have justified the lowest starting point. The Appellant used subterfuge to lure the victim to a vacant house, he deliberately referred to a pastor to gain her confidence, he would have completed the offence if he had not been disturbed, and he used force to get the victim to lie down pulling her panties down to her knees. This was not a "borderline" indecent assault.*

*As such I consider a starting point of 4 years imprisonment to be appropriate. The Appellant was entitled to a reduction for his guilty plea of one year, but was not entitled to any further reduction for good character. In all the circumstances, I consider a sentence of 3 years imprisonment to be appropriate."*

8. Considering the above, I commence your sentence at 4 years imprisonment for the charge of Attempted Rape.
9. The aggravating factors are:
  - (i) Serious breach of trust by the victim towards you
  - (ii) Lack of remorse
  - (iii) You took advantage of the victim's vulnerability
  - (iv) Total disregard to the victim's safety and wellbeing

(v) You repeatedly punched her on the thighs.

10. I add 2 years for above aggravating factors. Now your sentence is 6 years.

11. The mitigating factors are:

- (i) At the age of 25 you are first offender
- (ii) Family dependent on you.

12. I deduct 11 months for the above mitigating factors. Now the sentence is 5 years and 1 month.

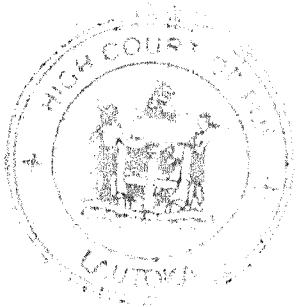
13. You were in remand from 4.12.2011 to 20.1.2012 for a period of 1 month and 16 days. Thus a period of 1 month 16 days to be deducted from your sentence. Now your sentence is 4 years 11 months and 14 days.

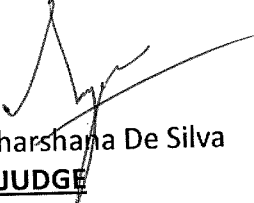
14. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 4 years as non-parole period.

#### Summary

15. You are sentenced to 4 years 11 months 14 days imprisonment. You will not be eligible for parole until you complete serving 4 years of imprisonment.

16. 30 days to appeal to Court of Appeal.



  
Sudharshana De Silva  
JUDGE

At Lautoka  
29<sup>th</sup> October 2014

Solicitors: Office of the Director of Public Prosecution  
Office of the Legal aid Commission for the Accused