

IN THE HIGH COURT OF FIJI  
AT LABASA  
APPELLATE JURISDICTION  
CRIMINAL APPEAL CASE NO: HAA 020 OF 2014 LAB

BETWEEN: ILAISA DELATIRI APPELLANT

AND: STATE RESPONDENT

Counsels : Appellant in person  
Ms. P. Low for Respondent

Hearing : 1 December, 2014

Judgment : 9 December, 2014

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**JUDGMENT**

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1. On 5 January 2011, the appellant (accused) appeared in the Labasa Magistrate Court, on the following charges:

*Statement of Offence*

Count 1

RAPE: Contrary to section 149 and 150 of the Penal Code, Cap 17.

### ***Particulars of Offence***

ILAISA DELATIRI, between the 18<sup>th</sup> day of July 2009 and the 19<sup>th</sup> day of July 2009 at Seaqaqa, in the Northern Division, had unlawful carnal knowledge of a woman, namely, **A. T. T. O.** without her consent.

### ***Statement of Offence***

#### **Count 2**

**COMMON ASSAULT:** Contrary to section 244 of the Penal Code, Cap 17.

### ***Particulars of Offence***

ILAISA DELATIRI on the 23<sup>rd</sup> day of July 2009, at Seaqaqa in the Northern Division, unlawfully assault **A. T. T. O.**

### ***Statement of Offence***

#### **Count 3**

**COMMON ASSAULT:** Contrary to section 244 of the Penal Code, Cap 17.

### ***Particulars of Offence***

ILAISA DELATIRI on the 3<sup>rd</sup> day of August 2009, at Seaqaqa in the Northern Division, unlawfully assault **A. T. T. O.**

2. The appellant waived his right to counsel, and said he would represent himself. The charges were read and explained to him. He said, he understood the same and he pleaded not guilty to count no. 1 and 2, but guilty to count no. 3. The matter went to trial on 17 August 2011, where Doctor Moape Bavoro (PW1) gave evidence. The medical examination concentrated only on the allegation of rape (count no. 1), not the alleged assault (count no. 2). However, the result of the medical examination was not helpful to the prosecution, because the doctor couldn't establish whether or not rape had occurred. This was probably due to the fact that the complainant had previously engaged in sexual intercourse, and this medical examination was done 16 days after the alleged rape, meaning any signs of bruises etc. would probably have healed by then.

3. On 1 May 2012, the complainant (PW2) gave evidence. On the issue of the alleged rape, she said, the accused had sexual intercourse with her, at the material time, without her consent. She said, the accused knew she was not consenting to sex, at the time. It appeared the accused planned the whole episode. He brought the beer, and invited the complainant to drink. When she was drunk, he forced the others PW3 (aunty) and PW4 (accused's son) away. Then he forced himself on the defenceless PW2, who was 15 years 9 months 7 days old on 19 July 2009. [See pages 51, 53, 55, 57 and 59 of the court record]. She also said, the accused assaulted her on numerous occasions.
  
4. PW3 (PW2's aunty) and PW4 (accused's son) then gave evidence. Both witnesses drank beer with PW2 and the accused, at the material time. When the accused was about to put his evil intention (i.e. rape PW2) into action, he chased PW3 and PW4 away from the crime scene. When they left, only PW2 and him were present. He was then able to put his evil intention into action. PW5 (caution interview police officer) and PW6 (charging police officer) then gave evidence. The prosecution then closed it case.
  
5. On 25 July 2012, the court ruled the accused has a case to answer. On 10 December 2012, the accused (DW1) gave evidence, in his defence. He admitted he had sexual intercourse with the complainant (PW2) at the material time. However, he said, it was with the complainant's consent, and he knew she was consenting to sex, at the material time. [See pages 75, 77, 79, 81 and 83 of the court record]. On count no. 2, he admitted he used violence on the complainant. He admitted the complainant was 15 years old, at the time.
  
6. On 28 May 2013, the court delivered a written judgment in court. As the judge of fact and law, the learned Resident Magistrate accepted the complainant's version of events, and found the accused guilty as charged on all counts, and convicted him accordingly on those counts. He rejected the accused's denials on the rape charge (count no.1) and common assault (count no. 2). On 19 June 2013, the court sentenced the accused to 10 years imprisonment on count no. 1 (rape); 9 months imprisonment on count no. 2 (common assault) and 6 months imprisonment on count no, 3 (common assault), all to be concurrent to each other. So, in effect, the Magistrate Court sentenced the accused to a total of 10 years imprisonment, with a non-parole period of 9 ½ years imprisonment.

7. The appellant (accused) was not happy with the above decision, and appealed to the High Court. He is not complaining about the conviction, but is complaining about the total 10 years imprisonment in that, according to him, it was harsh and excessive.

8. Although, he has not complained about his conviction, I have carefully read the court record and the court's judgment to find out if there was any error of law or fact. I have found none, and I find the learned Resident Magistrate had followed the correct procedure and law in convicting the accused on all counts. As judge of fact and law, he was entitled to accept the complainant's version of events on all allegations, because he found her to be a credible witness. He was also entitled to reject the accused's version of events on the allegations, because he found him not to be a credible witness. Thus the accused's conviction on the three counts was proper and correct.

9. On the sentence for rape, the case law precedents in this country is well settled. Rape carries a maximum sentence of life imprisonment, and the tariff for the rape of an adult is a sentence between 7 to 15 years imprisonment, while for a child (i.e. under 14 years old), it is 10 to 15 years imprisonment:

"Rape", as a sexual offence, had always been viewed seriously by society and the law makers of this country. It carried a maximum sentence of life imprisonment. It is a serious invasion of a person's privacy and dignity. The tariff for the rape of an adult is a sentence between 7 to 15 years imprisonment. For the rape of a child, the tariff is between 10 to 15 years imprisonment: ***Mohammed Kasim v The State***, Criminal Appeal No. 21 of 1993, ***Viliame Tamani v The State***, Criminal Appeal No. AAU 0025 of 2003, ***Mark Mutch v The State***, Criminal Appeal No. AAU 0060 of 1990; ***Anand Abhay Raj v The State***, Criminal Appeal No. AAU 0038 of 2010 – all Court of Appeal decisions; and ***State v Savenaca Turagakece***, Criminal Case No. HAC 252 of 2012S, High Court, Suva. The final sentence will depend on the aggravating and mitigating factors".

The learned Resident Magistrate's total sentence of 10 years imprisonment fell within the accepted tariff for the rape of an adult – given that the complainant was over 14 years at the time, and strictly a young person, at the time. In my view, the total sentence given by the learned Resident Magistrate was correct, and there was no

error of law. If the appellant didn't want the present 10 years imprisonment, he should have thought twice before raping the complainant, at the material time.

10. Given the above, the appellant's appeal against sentence is dismissed. I also find there are no good grounds for any appeal against conviction.



**Salesi Temo**  
JUDGE



**Solicitor for Appellant** : Appellant in Person  
**Solicitor for Respondent** : Office of Director of Public Prosecution, Labasa