

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 013 of 2015

STATE

v.

ERNEST PETUELI

Counsel: Mr. Y. Prasad with Ms. S. Serukai for State
Mr. M. Fesaitu for Accused

Dates of Hearing: 4th, 5th, 6th, and 7th April 2016

Date of Summing Up: 8th April 2016

Date of Judgment: 11th April 2016

Date of Sentence: 19th April 2016

SENTENCE

1. Earnest Petueli, you stand convicted for one count of Rape.
2. Brief facts of the case are, you were drinking alcohol with the complainant, her sister and some others and then tried to kiss and touch the complainant. Then the complainant, her sister and others went

away and then they started drinking at Syria Park near the Rewa river. You then joined them again and when the complainant laid down as she was tired, you carried her and threw her into the river. When the complainant's sister came to help her you pushed her away and came down to the complainant.

3. In the river you pulled the complainant's panty down and inserted your finger into her vagina. She then screamed for help. When she got the chance she kicked you and started swimming. She was pulled out of the river by 3 other girls. The complainant was 19 years old and you were 34 years old.
4. The maximum punishment for Rape is life imprisonment. Tariff for Rape of an adult is 7 – 15 years imprisonment. (**State v. Marawa**; HAC 0016T.2003S (23 April 2004).

Aggravating factors

5. You took advantage of the vulnerability of the victim when she was after consuming alcohol and you threw her into the river to make it difficult for her to resist your action.

Mitigating factors

6. I do not see any mitigating factors except your personal details. You are 35 years old and unmarried. These personal details will not carry much

weight in mitigation. You are not a first offender and therefore you are not eligible for a discount on previous good behaviour.

7. In the case of **Kasim v. State** (1994) FJCA 25; AAU 0021j.93S (27 May 1994) it was decided that the starting point for sentencing an adult in any rape case without aggravating or mitigating features, should be a term of imprisonment of 7 years.

8. In Mohammed Kasim's case court said:

"While it is undoubted that the gravity of rape cases will differ widely depending on all the circumstances, we think the time has come for this Court to give a clear guidance to the Courts in Fiji generally on this matter. We consider that in any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point".

9. I take 7 years as the starting point. I add 4 years for the aggravating factors and deduct 6 months for the mitigating factors. Now your sentence is 10 years and 6 months.

10. You have been in remand for this case from 20/12/2014 – 02/02/2015 and from 07/05/2015 to date. Therefore I deduct 1 year and 1 month from your sentence for your period in remand.

11. Now your final sentence is 9 years and 5 months imprisonment. Your non-parole period will be 8 years.



A handwritten signature in blue ink, appearing to read "Priyantha Fernando", with a checkmark-like flourish at the end.

Priyantha Fernando
Judge

At Suva

19th April 2016

Solicitors

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused.