

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 77 of 2014

STATE

V

TOMASI YABAKIONO

Counsels : Ms A. Vavadakua for State
Mr. A. Paka (L.A.C.) for the accused.

Date of conviction : 4 May 2016

Date of Sentence : 9 May 2016

SENTENCE

[1] The accused was tried in this court on one count of rape, one count of sexual assault and three counts of indecently annoying a person. He was convicted of the three indecently annoying counts and the rape but acquitted of the sexual assault count.

[2] At the time of the offences the accused was an Inspector of Police and the officer-in-charge ("OC") of the Taveuni Police Station. He had been posted to that station in February 2013 by the then Commissioner of Police to regularize matters after numerous complaints against the Island Police and their service. However the evidence suggests that under his control

he added a further dimension to the problems there; a climate of sexual harassment.

- [3] Three very junior female Police Officers told the Court of his authoritarian and oppressive management style. He told one married WPC to have an affair before subsequently raping her; he told another that he wanted to have an affair with her and he pestered the third single female volunteer with obscene and suggestive phone calls.

Mitigation

- [4] In written mitigation provided to the court, Counsel submits that his client is 47 years of age and has a clear record. He has served as a member of the Force for 21 years.
- [5] The accused claims to have served in the Sudan on a peace mission for the U.N. for 14 months in 2007.
- [6] He represented Fiji in a team playing in the Rugby League World Cup in 1993.
- [7] He has received a Commendation Medal for Long Service in the Police Force.
- [8] He is the Sole breadwinner and Counsel submits “he has been the corner stone in his family’s strife”, whatever that might mean.
- [9] The accused called two character witnesses in mitigation; the first being Senior Superintendent Singh, the Divisional Police Commander (Northern) who testified that he knows the

accused very well and knows him to be experienced and very mature.

- [10] The accused's wife told the Court that they had been married for 20 years and they had two daughters. He had been a loving husband and fully supported the family.

Aggravation

- [11] The Court finds that all four offences that the accused has been convicted of are aggravated by the fact that at the time of offending the accused was the professional Superior of the three women in question. He was in a position of professional care and his words and actions were in breach of that professional care. The women were obviously covered by his status in the station and by what they testified to be his overbearing and authoritative persona.

- [12] Each of the offences he is convicted of has its own particular aggravating feature(s) which the Court will deal with *post*.

The Law

- [13] The maximum penalty for rape is life imprisonment. The band of sentences mandated for the rape of an adult person is still the band set by the Court of Appeal in ***Kasim*** (unreported) Cr. Appeal 14 of 1993 (27 May 1994) which is from 7 to 15 years.
- [14] The maximum penalty for Indecently annoying another is imprisonment for one year without a tariff having been set; nor need there be one. There are a myriad ways in which a person

can be sexually harassed and the sentence will be at the discretion of the court hearing the matter.

Discussion

- [15] The rape conviction being the most serious will become the foundation sentence in this exercise.
- [16] Although the victim junior Policewoman submitted to this personal invasion without demur, she testified that she had no choice. It was her boss the OC and he had been trying to persuade her late at night in a deserted place for more than 30 minutes that he wanted to have sex with her. Her lack of consent therefore is covered by the provisions of Section 206(2)(d) of the Crimes Decree 2009 which negates consent when it is obtained by the exercise of authority.
- [17] Apart from the aggravation referred to *supra* it is further aggravating that this assault was perpetrated late at night in a very remote part of the Island while the two were returning from a Police operation. The accused had told the woman he was taking her home but he diverted the Police vehicle to the remote spot to press upon her his sexual desire.
- [18] In addition to the indignity occasioned to her by the rape she was further deprived of her dignity by being assaulted by her superior in the back of a Police Vehicle.
- [19] For the rape I take a starting point of 7 years imprisonment. For the severe aggravation of the vast difference in their respective status in the force I add to this a further 5 years imprisonment. For the indignities of late night, deserted place, and on the back seat of a Police vehicle I add a further two years to the

sentence. This brings the interim total to 14 years imprisonment.

[20] I acknowledge the accused's service to his country in peace keeping and his long service to the Police Force. In the spirit of **Batiratu** HAR 001 of 2012 per Gates CJ I discount the accused's sporting achievement.

[21] However I endorse the dicta of Goundar J. in **Vocea** HAC 129 of 2009, (para20):

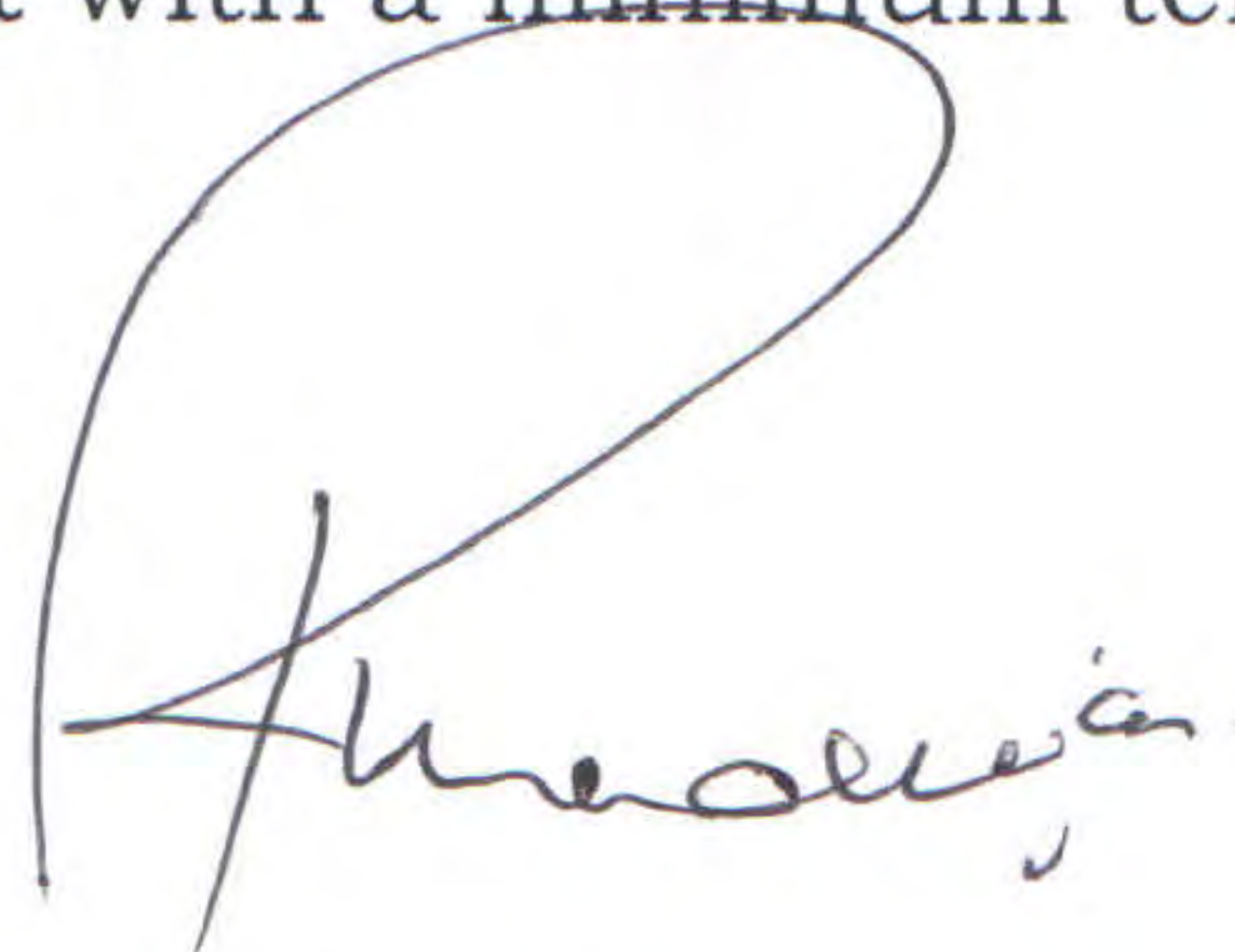
“ In the end, however, it is not possible for me to give undiminished weight to your previous good character and record of public serviceYou were given power and authority. With power and authority comes an obligation of trust. You betrayed that trust and in the course of doing that, you diminished the very values that were your duty to uphold.”

[22] These sentiments are particularly apposite to the circumstances in this case. For the credit that would and should have been given to the accused for his record of public service, a diminution of that time must follow his failure to set a good example of public service and his breach of trust.

[23] From the 14 years interim I deduct one year for his clear record and one year for his personal mitigation.

[24] For the rape of his junior officer I sentence the accused to a term of imprisonment of 12 years. He will serve a total term of 10 years before being eligible for parole.

- [25] The three offences of indecently annoying a person, while insignificant when compared with the rape, are nevertheless serious in the context of a Police Station. Although the name of the offence is old fashioned it amounts to no less than sexual harassment and sexual harassment in the work place in Fiji cannot be tolerated.
- [26] These three convictions displayed arrogant, condescending and presumptuous behaviour towards the three women in question.
- [27] The maximum penalty being 12 months imprisonment and in considering all the aforesaid mitigating and aggravating features I sentence the accused to 6 months imprisonment on Counts 1, 4 and 5. These three terms are to be served concurrently with each other and concurrently with the term of imprisonment imposed for Rape (Count 3).
- [28] The total term that this accused shall serve will be a term of 12 years imprisonment with a minimum term of 10 years.



P.K. Madigan

Judge



At Labasa

09 May 2016