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IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 159 OF 2015

BETWEEN: STATE

PROSECUTION

AND: ALAFI JONE

ACCUSED PERSON

Counsel: Mr. E. Samisoni and Ms. S. Puamau for State
Ms. T. Kean for Accused

Dates of Hearing: 30th and 31st May 2016

Date of Summing Up: 1st June 2016

Date of Judgment: 2nd June 2016

Date of Sentence: 7th June 2016

SENTENCE

1. Alafi Jone, you stand convicted for 1 count of Rape and one count of Assault Causing Actual Bodily Harm.

FIRST COUNT

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

Particulars of Offence

ALAFI JONE on the 24th August 2014 at Nasinu in the Central Division had carnal knowledge of OLIVIA MAILULU without her consent.

SECOND COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM:
Contrary to section 275 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ALAFI JONE on the 24th August 2014 at Nasinu in the Central Division assaulted OLIVIA MAILULU causing her actual bodily harm.

2. On 24/08/2014, you were drinking at 'Friends' nightclub during early hours with friends including the complainant and your girlfriend. After the others left, you continued to drink with the complainant and she passed out at the club.
3. Then you took her to one Leilani's house and assaulted her and raped her. You were 32 years old and the complainant was 26 years old.
4. The maximum punishment prescribed for Rape is imprisonment for life.
5. Tariff for Rape of an adult is 7 – 15 years imprisonment. (**Kasim v. State** (1994) FJCA 25; AAU 0021j.93S (27 May 1994).

6. In Kasim v. State (supra) 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.”

7. For the offence of Rape in Count No. 1, I take 7 years as the starting point without taking into consideration the aggravating factors and mitigation factors.

Aggravating factors

8. You breached the trust the complainant placed on you, in that the complainant trusted you as the cousin of yours and also as the boyfriend of her childhood friend and continued to drink with you after the friends left.

9. After the complainant got drunk and passed out, you took advantage of her vulnerable situation and took her to a house and raped her. You also assaulted her, causing injuries to shut her up when she struggled.

Mitigating factors

10. I take into account the mitigating factors submitted on your behalf. You are a first offender. You are 35 years old and you look after your elderly parents. You co-operated with the police. All good things mentioned about you by your character referee who is your church pastor are also taken into consideration.
11. I add 5 years for your aggravating factors and deduct 2 years for your above mitigating factors.
12. Now your sentence is 10 years imprisonment. Your non-parole period will be 9 years.
13. You have been in incarceration for this case for 1 month and 23 days. I further deduct 2 months for your period in remand.
14. Now your final sentence you have to serve for Rape in Count No. 1 is 9 years and 10 months. Your non-parole period will be 8 years and 10 months.

15. Maximum punishment prescribed for Assault Causing Actual Bodily Harm is imprisonment for 5 years.
16. Tariff for the offence of Assault Causing Actual Bodily Harm is an absolute or conditional discharge to 12 months imprisonment. (State v. Tugalala (2008) FJHC 78; HAC 025/2008S).
17. In State v. Tugalala (*supra*) Hon. Justice Shameem said:

“The tariff for this offence appears to range from an absolute or conditional discharge to 12 months imprisonment. The High Court said in Elizabeth Joseph v. The State [2004] HAA 030/04S and State v. Tevita Alafi [2004] HAA 073/04S, that it is the extent of the injury which determines sentence. The use of a pen knife for instance, justifies a higher starting point. Where there has been a deliberate assault, causing hospitalization and with no reconciliation, a discharge is not appropriate. In domestic violence cases, sentences of 18 months imprisonment have been upheld (Amasai Korovata v. The State [2006] HAA 115/06S.”

18. Aggravating factors and the mitigating factors will be the same as discussed before, but assault will not be taken into consideration as an aggravating factor as it is an element of the offence. However, the

number and the seriousness of the injuries will be taken into consideration.

19. Considering the above I sentence you to 10 months imprisonment for the offence of Assault Causing Actual Bodily harm in Count No. 2.
20. Therefore your final sentence you have to serve is:

Count No. 1 – Rape - 9 years and 10 months imprisonment.

Count No. 2 – Assault Causing Actual Bodily Harm – 10 months imprisonment.

Both sentences in Counts No. 1 and 2 are to run concurrently.

Your non-parole period will be 8 years and 10 months.




*Priyantha Fernando
Judge

At Suva

07th June 2016

Solicitors

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