

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO: HAC 25 OF 2015**

STATE

V

JONE SENIBIAU

Counsel : Ms. A. Vavadakua for State  
Ms. S. Devi for Accused

Hearing : 3<sup>rd</sup> and 4<sup>th</sup> October, 2016  
Summing Up : 5<sup>th</sup> October, 2016  
Judgment : 6<sup>th</sup> October, 2016  
Sentence : 7<sup>th</sup> October, 2016

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## SENTENCE

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- [1] JONE SENIBIAU; after being convicted on a single count of Rape, contrary to Section 207(1) and (2)(b) of the Crimes Decree No. 44 of 2009, you are to be sentenced by this Court.
- [2] You pleaded not guilty to above charge. The ensuing trial lasted for 2 days in this Court; during which, the complainant and the Police officer who recorded your caution interview statement have given evidence for the prosecution while you opted to remain silent.

[3] At the conclusion of the trial; having reviewed the evidence and its summing up to the assessors, this Court decided to accept their unanimous opinion and found you guilty and convicted you to the count of Rape.

[4] The following facts were proved during the trial:

(i) *You are a known person to the complainant.*

(ii) *On the night of 19<sup>th</sup> March 2015 at about 2.45 a.m. the complainant woke up when she felt someone, first touching her vagina and then, inserting a finger into it without her consent.*

(iii) *She saw your face and identified you when you were squatting on the other side of the netting, which separated both of you. She saw your face from the light coming from her solar lamp. You then ran away.*

(iv) *There was a vertical cut in the netting through which you put your hand in to penetrate her. She later found a razor blade near the cut.*

[5] According to Section 207(1) of the Crimes Decree No. 44 of 2009, the maximum punishment for Rape is imprisonment for life. It is a serious offence.

[6] The tariff for Rape of an adult is a term of imprisonment ranging from 7 years to 15 years as per **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; of 27 May 1994,.

[7] In the same judgement, the Court of Appeal observed thus:

*"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."*

[8] In determining the starting point within the said tariff, Goundar J, in **Koroivuki v The State** [2013] FJCA 15 has formulated the following guiding principles:

*"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors*

*at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".*

[9] Considering the nature of offending, in the light of the above guiding principles, I commence your sentence at 8 years of imprisonment for the count of Rape.

[10] The aggravating factors are:

- a. *Significant degree of planning;*
- b. *Taking advantage of the victim's vulnerability as a young widow;*
- c. *Invasion into her right to privacy in late night;*

[11] I add 3 years to your sentence on the above aggravating factors. Now your sentence is 11 years.

[12] You submitted the following as mitigating factors:

- (i) *You are a 28 year old unmarried farmer who earns \$100 a month;*
- (ii) *You support your mother and schooling sister as their sole breadwinner;*
- (iii) *Your father left your mother when she was pregnant with you.*

[13] In ***Raj v State*** [2014] FJSC 12, the Supreme Court endorsed the pronouncement of the Court of Appeal that their Lordships "... *do not consider that allowance should have been made for family circumstances.*" In view of this principle; on sentencing of an accused for the offence of Rape, laid down by the superior Courts, these grounds urged by you as mitigation, will not entitle you to any reduction of sentence.

[14] It is submitted that you were in remand for this case for a total period of "approximately" six months. I consider your period of remand as six months.

[15] I deduct your 6 month long remand period from the sentence and now the head sentence is 10 years and 6 months for the count of Rape.

[16] Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 8 years and 6 months of non-parole period.

[17] Your final sentences are as follows:

**Head Sentence - 10 years and 6 months**

**Non parole period - 8 years and 6 months**

[18] You have 30 days to appeal to the Court of Appeal.



ACHALA WENGAPPULI

JUDGE



At Labasa

7<sup>th</sup> October, 2016

Solicitor for the State : Office of the Director of Public Prosecution, Labasa  
Solicitor for the Accused : Office of the Legal Aid Commission, Labasa