

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 50 OF 2017

STATE

-v-

KAVERIELI VATUOROORO

Counsel : Mr. A. Datt for the State
Mr. Nazeem Khan for Accused

Date of Sentence : 28th July, 2017

SENTENCE

1. Mr. KAVERIELI VATUOROORO, you tendered an unequivocal 'plea of guilty' on 4th May, 2017 to the following count when you were represented by a Counsel.

Statement of Offence

RAPE: Contrary to section 207(1) and 207(2) (b) of the Crimes Act 2009.

Particulars of Offence

KAVERIELI VATUOROORO, between the 4th day of February 2017 and the 5th day of February 2017, at Toge, Ba in the Western Division, penetrated the vulva of **LUSIANA ROKOCA**, with his finger, without her consent.

2. You were explained the consequence of the guilty plea and the tariff of the sentence. You understood the same and maintained your plea of guilt. I accepted your guilty plea when I was satisfied that it was unequivocal, voluntary and free from any influence.
3. You agreed the summary of facts filed by the State on 6th July 2017. I found that the summary of facts proved each element of count of Rape with which you were charged. You were convicted of Rape accordingly. You now come before this Court for sentence.
4. The summary of facts filed by the State was that:

The complainant is Lusiana Rokoca, aged 28 years, School Teacher, of Toge Village, Ba ("complainant"). The defendant is Kaverieli Vatuorooro, aged 21 years, Farmer, of Toge Village, Ba ("the defendant").

The complainant and the defendant knew each other as they resided in the same community. The complainant resided with her 2- year- old daughter in her house.

On 4th February 2017, around 7.00 pm the complainant returned home with her daughter from town. After dinner they went to sleep. Around 11.30 pm in the night the complainant heard the sound of burglar bars being pulled. She went to check in the middle room, and saw the defendant entering the same room through the burglar bars on the room's window. The complainant asked what the defendant was doing and in response the defendant said for her to be quiet.

The defendant then covered the complainant's mouth and took her to the bedroom where she and her daughter were sleeping. The complainant was struggling to break free. By this time the daughter had woken up and was crying. The defendant pushed the complainant onto the floor then came closer to her. The defendant heavily smelt of liquor. He then forcefully lifted the round neck t-shirt she was wearing and her bra, and then he sucked her breasts. He also licked the complainant's neck and stomach.

After that the defendant forcefully opened the ¾ pants that the complainant was wearing, placed his hand inside her panty and poked her vagina thereby penetrating the vulva of

the complainant with his finger. The complainant was scared for the safety of her daughter hence she let the defendant do what he was doing. Then the defendant told the complainant to hold his penis, which she did out of fear.

Thereafter, the defendant stood up and went outside. He then apologized to the complainant for what he had done and asked her not to tell anyone about it. The complainant then informed her mother and her younger sibling of what the defendant had done, and later she rang and reported the incident to the police.

The complainant was medically examined on 05/02/2017 around 11.09 am by one Dr. Talei Tamaka ("PW2") at Ba Mission Hospital. PW2 noted "slight areas of hyperemia consistent with friction/recent pressure at introitus". A copy of the medical report is annexed.

The defendant was taken into custody and caution interviewed on 06/02/2017. At Q.32 and Q.33 of the caution interview, the defendant admitted to entering the complainant's house through the window. At Q.37 the defendant said that he had pressed the complainant's mouth and dragged her when they were in the complainant's bedroom and not in the middle room. At Q.38 the defendant said that the complainant pushed him away when they were in her bedroom and not in the middle room. At Q.39 the defendant admitted that he tried to kiss the complainant but she pushed him away. At Q.40 the defendant said that he told the complainant to lift her t-shirt and he sucked her breasts. At Q.42 the defendant admitted to poking the complainant's vagina with his finger.

5. The maximum sentence for rape is imprisonment for life.
6. The tariff for adult rape is well settled. The starting point for adult rape is seven years' imprisonment *Kasim v The State* (Crim App. No. AAU0021j of 1993S) and the tariff is set between 7 and 15 years' imprisonment (*State v Marawa* [2004] FJHC 338).
7. In selecting the starting point, I considered the objective seriousness of the offending. You invaded the complainant's house in night when complainant was on bed with her 2 year old daughter. The rape was committed in a frightening manner. Considering the circumstances of the offending, I pick a starting point of 8 years from the lower end of the tariff.
8. **Aggravating Circumstances**

- You used violence to commit this offence. You closed Complainant's mouth and pushed her to the floor when she was struggling to free herself.
- You committed this offence under influence of alcohol and with utter disregard to complainant's 2 year- old daughter who was crying.
- Rape committed by you was associated with other forms of indecent assaults (sucking her breasts and licking her neck and stomach) for which you have not been charged.

9. **Mitigating Circumstances**

- Your personal circumstances are such that you are relatively young offender, 21 years old. You are a farmer and looking after your ailing father.
- You admitted the offence at the caution interview and cooperated with police.
- You pleaded guilty to the charge at the first available opportunity. You thereby saved precious time and other resources of this court and prevented the complainant giving evidence and repeating her ordeal.
- You have been remorseful. After committing this offence, you stood up and went outside and apologized for your behavior.
- You are a first offender and have maintained a clear record thus far.
- You sought forgiveness of this court and promise not to reoffend.

10. I increase your sentence by 2 years to reflect aforementioned aggravating features bringing your interim sentence to 10 years' imprisonment. I deduct 2 years to reflect compelling mitigating circumstances and the time spent in remand (2 days). Your final sentence is 8 years' imprisonment.

11. Your Counsel seeks a lenient sentence for you and strenuously argues that you did not proceed to penetrate complainant's vagina with your penis and only inserted a finger and you have not satisfied your lustful demands including ejaculation and therefore you are less culpable.

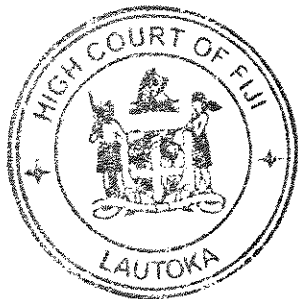
12. I do not agree with this contention. Your Counsel's argument seems to be based on a wrong construction of rape which the modern criminal law rejects. It is based on the myth that rape is a crime of lust or passion. Rape is increasingly

being recognized as a crime of power committed against human dignity: men (perhaps women) rape others also because they seek to dominate and brutalize the weak.

13. Your Counsel having cited the sentence passed by this Court in State v Ralulu - [2017] FJHC 331; HAC78.2013 (5 May 2017) seeks leniency.
14. Sentencing is an inherently individualized process that takes into account the offence as well as the offender of each particular case. R v Anglillo 2006 SCC 55, R. v Briand [2010] NJ No. 39 (C.A) R v M (C.A), [1996] S.C.J. No 28.
15. In Ralulu (supra) this Court considered special circumstances of that case when it sentenced the offender under tariff, particularly the fact that the offender had just reached his adulthood (he was approximately 18 old) at the time of the offending and victim's admission that offender was her school mate and lover. The only aggravating factor in that case was that the offender had breached trust as victim's boyfriend.
16. In your case you are 21 years old and you committed this offence in a violent manner on a teacher older than you (28 years) in a night time invasion. In the facts agreed by you, there is no relationship in the past, sexual or otherwise, between you and the complainant although your Counsel in his submission has submitted otherwise.
17. Having considered your age and the fact that you are a first offender, I impose a non-parole period of 6 years. You are thus eligible to parole after 6 years in prison.

Summary

18. You are sentenced to 8 years' imprisonment with a non-parole period of 6 years.
19. You have 30 days to appeal to the Court of Appeal.




Aruna Aluthge

Judge

At Lautoka

28th July, 2017

Solicitors: Office of the Director of Public Prosecution for State

Nazeem Lawyers for Accused