

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 088 OF 2017S

STATE

vs

AKUILA NAVUDA

Counsels : Ms. L. Bogitini for State
Accused in Person
Hearing : 2 May, 2017
Sentence : 3 August, 2017

SENTENCE

1. In a judgment delivered in the Suva Magistrate Court on 10 March 2017, the Learned Resident Magistrate found you guilty and convicted you on the following charge:

Statement of Offence

RAPE: Contrary to Section 149 and 150 of the Penal code Act 17.

Particulars of Offence

AKUILA NAVUDA on the 22nd day of December 2006 at Samabula Central Division had unlawful carnal knowledge of **L. S.**, without her consent.

2. I have read the Magistrate Court record. The case started on 20 February 2007 and concluded on 10 March 2017, almost 10 years later. All parties are to be blamed for this sorry state of

affairs, that is, the Prosecution, the defence and the court. The court should have taken a more robust case management method; the prosecution should have taken a more determined attitude to bring the case to a conclusion and the accused should not have absconded from the court for more than 3 years. This sorry state of affairs should be avoided in future by transferring all rape cases to the High Court for trial as soon as possible after first call.

3. In any event, I have read the Learned Resident Magistrate judgment dated 10 March 2017, and as judge of fact and law, he had found the accused guilty as charged and convicted him accordingly. In my view, his reasoning was sound.
4. The facts of the case were as follows. In 2006, there was a training centre at Wailoku for young girls who wanted to become nuns. The complainant (PW1) was part of this group. She was assigned the task to prepare the breakfast for the girls on 22 December 2006. At 5am, she woke up and went outside to prepare the fire for their tea. While doing the same, a person approached her from behind, closed her mouth with one hand and put a knife to her neck. The person then dragged her to a nearby plantation, forcefully took off her clothes, indecently assaulted her and penetrated her vagina with his penis without her consent. During the attack, the person held a knife to the complainant's stomach. The complainant identified the accused as her alleged rapist. The matter was reported to the police. An investigation was carried out. The accused was finally tried and convicted in the Suva Magistrate Court.
5. As I have said in **State v Poate Rainima**, Criminal Case No. HAC 034 of 2011S, High Court, Suva, "Rape" is always a serious offence. It carries a maximum sentence of life imprisonment. It is the worst form of sexual assault on an individual. It is an unwanted invasion of a person's body without that person's consent. Consequently, the courts take a dim view of it, and have set a tariff of 7 to 15 years imprisonment. The worse form of rape is reserved for the higher end of the tariff See **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; **Bera Yalimawai v The State**, Criminal Appeal No. AAU 0033 of 2003, Fiji Court of Appeal; **Navuniani Koroi v The State**, Criminal Appeal No. AAU 0037 of 2002, Fiji Court of Appeal and **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal. The final sentence will depend on the presence or otherwise of mitigating and/or aggravating factors.
6. The aggravating factors, in this case, were as follows:

- (i) Use of a knife in the offence: The level of violence you used on the complainant while offending against her was very high. First, you attacked her from behind when she was lighting the fire for their tea. Then you gagged her mouth with a hand and put a knife to her neck, and threatened to kill her if she raised the alarm. Then you dragged her to a nearby plantation, performed indecencies on her and forcefully raped her. Throughout the rape, you held a knife to her stomach, and warned her not to raise the alarm. Then after raping her, you warned her that you will return. You were really mean to the complainant when you offended against her, and you must not complain when you loose your liberty to pay for your crime.
 - (ii) You had no regard whatsoever to her right as a human being when you attacked and raped her.
 - (iii) Obviously, you planned your attack on her early in the morning, when the others were still asleep.
7. The mitigating factor was as follows:
 - (i) Looking at the court record, you had been remanded in custody for a total of 1 year 8 months approximately.
8. I start with a sentence of 14 years imprisonment. I add 5 years for the aggravating factors, making a total of 19 years imprisonment. I deduct 2 years for time already served while remanded in custody, leaving a balance of 17 years imprisonment.
9. Mr. Akuila Navuda, for violently raping the complainant at Wailoku in the Central Division on 22 December 2006, I sentence you to 17 years imprisonment, with a non-parole period of 16 years imprisonment, effective forthwith.
10. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner which is just in all the circumstances, to protect the community from people like you, to deter other would-be offenders and to signify that the court and the community denounce what you did to the complainant on 22 December 2006 when you raped her using a knife
11. The name of the complainant is permanently suppressed to protect her privacy.

12. You have 30 days to appeal to the Court of Appeal.



Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva
Solicitor for Accused : Accused in Person