

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 054 OF 2017LAB

STATE

vs

BEIATEUEA MOTETE

Counsels : Mr. R. Kumar for State
Accused in Person

Hearings : 20 and 23 November, 2017

Sentence : 18 December, 2017

SENTENCE

1. On 20 and 27 October 2017, you waived your right to counsel and said you would be representing yourself. On 20 November 2017, you pleaded guilty to the counts in the following information:

FIRST COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act 2009.

Particulars of Offence

BEIATEUEA MOTETE, on 02 September 2017, at Rabi Island in the Northern Division assaulted **T.B. (N.T)** thereby occasioning her actual bodily harm.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

BEIATEUEA MOTETE, on 02 September 2017, at Rabi Island in the Northern Division, penetrated the vagina of **T.B (N.T)**, with his penis, without her consent.

2. The facts of the case were as follows. The accused was 22 years old on 2 September 2017. He reached class 4 level education and was a subsistence farmer by profession. He resided at Tabiang village in Rabi Island. Next to the accused's house was the complainant's son's house, where the complainant was living at the time. She was 68 years old at the time. On 1 September 2017 (Friday) at 4pm, the accused started drinking homebrew with friends at a sea shore. There were 4 buckets of homebrew. He continued drinking homebrew throughout the night into the early morning on 2 September 2017 (Saturday). Between 8am to 9am, the complainant was returning from her daughter's residence in Tabiang village.
3. She was walking alone on a track near the old airport. She came into contact with the accused, who was drunk at the time. The accused suddenly attacked her by repeatedly punching her face, ribs and stomach. She suffered multiple bruises and abrasions on her face and body. The accused later dragged her into the bush, forcefully took off her clothes and forcefully inserted his penis into her vagina without her consent. The accused knew she was not consenting to sex at the time. The matter was later reported to police and the accused was charged with assault and rape.
4. On 23 November 2017, the court checked with you on whether or not you are admitting the prosecution's summary of facts, as mentioned above, and whether or not you are admitting the elements of the offence in counts no. 1 and 2. You admitted the above summary of facts and admitted the elements of the offences in counts no. 1 and 2. As a result of the above, the court found you guilty as charged on counts no. 1 and 2, and convicted you on those two counts.

5. I have noted your plea in mitigation. I note you are a first offender, single with no children. You reached class 4 level education and you are a subsistence farmer by profession. You pleaded guilty early and had been remanded in custody for approximately 3 months.
6. In State v Eroni Tavatavanawai, Criminal Case HAC 056 of 2013S, I said the following, "... "Rape", as a sexual offence, had always been viewed seriously by society and the law makers of this country. It carried a maximum sentence of life imprisonment. It is a serious invasion of a person's privacy and dignity. The tariff for the rape of an adult is a sentence between 7 to 15 years imprisonment. For the rape of a child, the tariff is between 10 to 15 years imprisonment: Mohammed Kasim v The State, Criminal Appeal No. 21 of 1993, Viliame Tamani v The State, Criminal Appeal No. AAU 0025 of 2003, Mark Mutch v The State, Criminal Appeal No. AAU 0060 of 1990; Anand Abhay Raj v The State, Criminal Appeal No. AAU 0038 of 2010 – all Court of Appeal decisions; and State v Savenaca Turagakece, Criminal Case No. HAC 252 of 2012S, High Court, Suva. The final sentence will depend on the aggravating and mitigating factors".
7. In this case, the aggravating factors, were as follows:
- (i) **Breach of Neighbourly Trust.** The complainant and her family were your neighbours in the village. In fact, you were staying with the complainant's daughter-in-law's brother. So, in a sense, you were related. As such, you were supposed to look after one another, in a village setting. However, you abused your neighbour's trust by attacking and raping their elder. You will have to serve a prison sentence to teach you not to abuse other people's trust.
 - (ii) **Serious Attack on a village elder.** In a village setting, the expected norm was that the old will look after the young ones, and the young ones will respect the elder ones. Continued observance of this norm will ensure peace and harmony in the village. Your action in attacking and raping a village elder potentially could undermine village peace and harmony. You thus have to accept a prison sentence to atone for your criminal acts.
 - (iii) By offending against the complainant, you showed no regards to her right as a human being, no regards to her right to safety and freedom from harm and no regards to her right to a happy and peaceful life.
8. The mitigating factors, were as follows:
- (i) At the age of 22 years, this was your first offence;
 - (ii) You pleaded guilty early, that is, 2 months after the first call on 21 September 2017;
 - (iii) You had been remanded in custody for 3 months 5 days.

9. I will start with count no. 2 (rape), as it is the more serious of the two offences. I start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors making a total of 16 years imprisonment. For time already served while remanded in custody, I deduct 4 months, leaving a balance of 15 years 8 months imprisonment. For being a first offender at the age of 22 years, I deduct 8 months, leaving a balance of 15 years imprisonment. For pleading guilty 2 months after first call in the High Court, I deduct 3 years, leaving a balance of 12 years imprisonment. On count no. 2 (rape), I sentence you to 12 years imprisonment.
10. On count no. 1 (Assault Causing Actual Bodily Harm), I sentence you to 12 months imprisonment.
11. The summary of your sentences are as follows:
- | | | | | | |
|------|-------------|---|------------------------------------|---|-----------------------|
| (i) | Count no. 1 | : | Assault Causing Actual Bodily Harm | - | 12 month imprisonment |
| (ii) | Count no. 2 | : | Rape | - | 12 years imprisonment |
12. Because of the totality principle of sentencing, I direct that the above sentences are to be made concurrent to each other, that is, a final total sentence of 12 years imprisonment.
13. Mr. Beiateuea Motete, for assaulting and raping the complainant on 2 September 2017, at Rabi Island in the Northern Division, I sentence you to 12 years imprisonment, with a non-parole period of 11 years imprisonment, effective forthwith.
14. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner which was 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 community denounce what you did to the complainant on 2 September 2017.
15. The name of the female complainant is permanently suppressed to protect her privacy.
16. You have 30 days to appeal to the Court of Appeal.


Salesi Temo
JUDGE



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