

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 064 OF 2017S

STATE

Vs

ISOA RAINIMA

Counsels : Ms. K. Semisi, Ms S. Lodhia and Mr. J. Andrew for State
Mr. L. Qetaki and Mr. N. Chand for Accused

Hearings : 15, 16, 17, 18, 19 and 22 October, 2018

Summing Up : 24 October, 2018

Judgment : 24 October, 2018

Sentence : 25 October, 2018

SENTENCE

1. In a judgment delivered yesterday, the court found you guilty and convicted you on the following counts in the following information:

FIRST COUNT

REPRESENTATIVE COUNT

Statement of Offence

ASSAULT WITH INTENT TO COMMIT RAPE: *Contrary to section 209 of the Crimes Act 2009.*

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division assaulted one M.S. with the intention to rape her.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division had carnal knowledge of M.S. without her consent.

THIRD COUNT

REPRESENTATIVE COUNT

Statement of Offence

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

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division penetrated the vagina of M.S. with his fingers without her consent.

FOURTH COUNT

REPRESENTATIVE COUNT

Statement of Offence

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

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division penetrated the vagina of M.S. with a stick without her consent.

FIFTH COUNT

REPRESENTATIVE COUNT

Statement of Offence

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

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division penetrated the vagina of M.S. with his tongue without her consent.

SIXTH COUNT

REPRESENTATIVE COUNT

Statement of Offence

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

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division penetrated the anus of M.S. with his fingers without her consent.

**SEVENTH COUNT
REPRESENTATIVE COUNT**

Statement of Offence

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

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division penetrated the anus of M.S. with a stick without her consent.

EIGHTH COUNT

Statement of Offence

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

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division penetrated the mouth of M.S. with his penis without her consent.

NINTH COUNT

REPRESENTATIVE COUNT

Statement of Offence

SEXUAL ASSAULT: *Contrary to section 210(1)(a) and (2) of the Crimes Act 2009.*

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division unlawfully and indecently assaulted the complainant M.S. by licking her vagina.

TENTH COUNT

Statement of Offence

CRIMINAL INTIMIDATION: *Contrary to section 375(1)(a)(IV) of the Crimes Act 2009.*

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division criminal intimidated M.S. by threatening to kill her.

ELEVENTH COUNT

Statement of Offence

ROBBERY: *Contrary to section 310(1)(a) of the Crimes Act 2009.*

Particulars of Offence

ISOA RAINIMA on the 30th day of December 2016 at Suva in the Central Division robbed M.S. of 1 mobile phone, 1 gold plated wrist hand watch, 1 hand bag, 1 pencil

case, pens, 1 pair of flip flops, charger, USP ID cards, clothes and \$40.00 cash monies and at the time of such robbery did use personal violence on the said M.S.

2. The facts of your case were briefly as follows. On 30 December 2016, the complainant (PW1), aged 23 years old, was walking along Holland Street towards Knolly Street. It was after 10.05 am. It was a bright sunny morning. You suddenly came from behind her and shoulder tackled her. You then threw her over the metal railings. She fell 2 meters down the slope. You jumped in after her. You landed beside her and threw several heavy punches to her face and head. She cried out loud to raise the alarm, but it was to no avail. Her left eye was swollen, and it was also cut below the same. You repeatedly swore at her, and threatened her not to "misbehave".
3. You later forced her down the slope, and took her through a tunnel below Holland Street. You forced her to the other side, facing Wainibukalou Creek. You later stripped her naked, and repeatedly raped her, as alleged in counts no. 2, 3, 4, 5, 6, 7 and 8. In the course of raping her, you were extremely brutal to her. You repeatedly threatened to kill and assault her. You unlawfully confined and dominated her for an hour. You thrust a big stick into her vagina. You later strangled her with some nearby bush vines. You later whacked her head three times with a big stick, and left her for dead. You also stole her properties as alleged in count no. 11, and indecently assaulted her on many occasions. You were extremely cruel to the complainant.
4. Of the offences you committed on 30 December 2016, "rape" was the most serious. It carried a maximum sentence of life imprisonment (see section 207(1) of the Crimes Act 2009). This meant that the people of Fiji, through their representatives in Parliament, view the offence of rape as a serious matter and had prescribed the maximum sentence of life imprisonment for it. Rape is a serious invasion of a person's dignity and privacy. It demeans people. It is the ultimate show of disrespect to a person. Thus, the courts had prescribed a tariff of 7 to 15 years imprisonment for the rape of an adult: see **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; **Bera Yalimaiwai v The State**, Criminal Appeal no. AAU 0033 of 2003, Fiji Court of Appeal and **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal. The actual sentence will depend on the mitigating and aggravating factors.
5. "Assault with intent to rape", contrary to section 209 of the Crimes Act 2009, carries a maximum sentence of 10 years imprisonment.

6. "Sexual Assault", contrary to section 210(1) and (2) of the Crimes Act 2009, carries a maximum sentence of 10 years imprisonment.
7. "Robbery", contrary to section 310(1)(a) of the Crimes Act 2009, carries a maximum sentence of 15 years imprisonment.
8. "Criminal Intimidation", contrary to section 375(1)(a)(iv) of the Crimes Act 2009, carries a maximum sentence of 5 years imprisonment.
9. The aggravating factors in this case were as follows:
 - (i) **Pre-planning of the offences.** Looking at the total evidence provided in the case, it showed that you had obviously pre-planned these offendings. You knew the Holland Street well. You knew the tunnel and the surrounding environment very well. You knew that the public does not often come to the area. You knew it would be an ideal place to offend against the complainant. You knew the privacy in the area. You knew that even if the complainant raised the alarm, it would be difficult for others to hear her. With the above knowledge in hand, you shoulder tackled the complainant and threw her over the metal railings on 30 December 2016, and later proceeded to offend against her. You were like a predator, waiting to pounce on unsuspecting innocent girls, who were going about their own business on Holland Street. You were cunning and deceitful. You must accept that your type of behaviour will not be tolerated by society. You must also accept that predators like you, will have to serve a long prison sentence, to protect innocent young girls, like the complainant.
 - (ii) **The level and extent of the violence accompanying the offendings.** Technically, from a legal perspective, you raped the complainant numerous times on 30 December 2016, thus the counts in the information. However the level of violence you unleashed on the complainant during her one hour ordeal was the worst I've seen in the 24 years I have sat on the bench. You began by shoulder-tackling her on Holland Street. You then threw her over the metal railings. You followed her and threw several hard punches on her face and head. You forced her down a slope. You repeatedly swore at her and threatened to kill her if she did not follow your commands. Then you continually subdued and dominated her. You stripped her naked and repeatedly

offended against her. You stuck sticks into her vagina and anus. You continually threatened her with violence. You later tried to strangle her by tying her neck to a vine. Later you hit her head three times with a stick and knocked her unconscious. You left her for dead and fled the crime scene. You must realise these type of behaviour cannot be tolerated in our society, and you will have to be punished for the cruelty you unnecessarily unleashed on this girl on 30 December 2016. I therefore ask you not to complain about the long prison sentence I am about to give you.

- (iii) **Physical and Psychological Injuries to the Complainant.** After your offending, the complainant was medically examined at CWM hospital. A medical report showed the extensive injuries she suffered. This report was tendered in court as prosecution exhibit no. 6. She suffered injuries to her face and head. She also suffered injuries to her private parts. These were the results of your offending. During the trial, it was evident that she was finding it difficult to relive her ordeal in the courtroom when giving evidence. She fainted in the courtroom. The above are the physical and psychological damage you have caused the above individual, and you must not complain when you are punished for it.
- (iv) Through your offending, you had shown no regard to the complainant's right not to be harmed, no regard to her right as a human being and no regard to her right to live a happy and peaceful life.

10. The mitigating factor I found is only one:

- (i) You were remanded in custody from 15 February 2017 to 8 January 2018, when you were sentenced to 9 months imprisonment for certain offences. You were released from jail on 11 September 2018, and had been remanded in custody since then. Your total remand in custody time appears to be approximately 12 months.

11. I will start my sentence on the offence of "rape", as they are the most serious offences. On count no. 2, I start with a sentence of 13 years imprisonment. I add 4 years for the aggravating factors, making a total sentence of 17 years imprisonment, I deduct 1 year for time already served, while remanded in custody, awaiting trial. The balance is 16 years imprisonment. On count no. 2, I sentence you to 16 years imprisonment.

12. I repeat the above process and sentence for counts no. 3, 4, 5, 6, 7 and 8, all rape offences.

13. On count no. 1, I sentence you to 4 years imprisonment.

14. On count no. 9, I sentence you to 4 years imprisonment.

15. On count no. 10, I sentence you to 3 years imprisonment.

16. On count no. 11, I sentence you to 6 years imprisonment.

17. The summary of your sentences are as follows:

(i)	Count no. 1	- Assault with Intent to Rape	:	4 years imprisonment
(ii)	Count no. 2	- Rape	:	16 years imprisonment
(iii)	Count no. 3	- Rape	:	16 years imprisonment
(iv)	Count no. 4	- Rape	:	16 years imprisonment
(v)	Count no. 5	- Rape	:	16 years imprisonment
(vi)	Count no. 6	- Rape	:	16 years imprisonment
(vii)	Count no. 7	- Rape	:	16 years imprisonment
(viii)	Count no. 8	- Rape	:	16 years imprisonment
(ix)	Count no. 9	- Sexual Assault	:	4 years imprisonment
(x)	Count no. 10	- Criminal Intimidation	:	3 years imprisonment
(xi)	Count no. 11	- Robbery	:	6 years imprisonment

18. Given the level of violence and cruelty that you showed to the complainant in this case, and how you had damaged her physically and psychologically, and in the interest of justice, I direct that the sentences in count no. 1, 7 and 10 be made consecutive to each other, that is, a total sentence of 23 years imprisonment.

19. Because of the totality principle of sentencing, I direct that all the other sentences in the other counts, be made concurrent to the 23 years imprisonment sentence mentioned above. The final total sentence is 23 years imprisonment.

20. Mr. Isoa Rainima, for the eleven offences you committed against the complainant on 30 December 2016, at Suva in the Central Division, I sentence you to 23 years imprisonment, with a non-parole period of 20 years imprisonment, effective forthwith.
21. Pursuant to section 4(1) of the Sentencing and Penalties Act 2009, the above sentence was designed to punish you in a manner that was just in all the circumstances, to protect the community from people like you, to deter other would-be offenders like you, and to signify that the court and community denounce what you did to the complainant on 30 December 2016.
22. The complainant's name is permanently suppressed to protect her privacy.
23. 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 : **Legal Aid Commission, Suva**