

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 08 OF 2017

BETWEEN: **THE STATE**

AND: **MALAKI TUVALU**

Counsel: **Mr R Kumar for the State**
 Mr V Tuicolo for the Accused

Date of Hearings: **13 and 14 March 2018**

Date of Summing Up: **15 March 2018**

Date of Judgment: **16 March 2018**

Date of Sentence: **16 March 2018**

SENTENCE

- [1] Malaki Tuvalu, you stand convicted of rape, which is one of the most serious offences in the Crimes Act 2009. The maximum penalty for rape is life imprisonment. There is no established tariff for rape of an adult victim but in *Kasim v State* [1994] FJCA25; Aau0021j.93s (27 May 1994), the Court of Appeal recommended a starting point of 7 years imprisonment. In that case the Court said:

While it is undoubted that the gravity of rape cases will differ widely depending on all the circumstances, we think the time has come for this Court to give a clear guidance to the Courts in Fiji generally on this matter. We consider that in any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. 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. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point.

[2] In *Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015), the Supreme Court endorsed the following factors to be considered when sentencing for rape:

- (a) whether the crime had been planned, or whether it was incidental or opportunistic;
- (b) whether there had been a breach of trust;
- (c) whether committed alone;
- (d) whether alcohol or drugs had been used to condition the victim;
- (e) whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;
- (f) whether the impact on the victim had been severe, traumatic, or continuing;
- (g) whether actual violence had been inflicted;
- (h) whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;
- (i) whether the method of penetration was dangerous or especially abhorrent;
- (j) whether there had been a forced entry to a residence where the victim was present;
- (k) whether the incident was sustained over a long period such as several hours;
- (l) whether the incident had been especially degrading or humiliating;
- (m) If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;
- (n) Time spent in custody on remand.

[6] I consider the following factors as aggravating to make an upward adjustment to the sentence:

- Gross breach of trust.
- Vulnerability of the victim due to old age and being a widow.
- The victim was sexually abused in the security of her home and while she was asleep at night.
- Humiliating experience of the victim.

[7] You have been in custody on remand for seven days. I make a downward adjustment to your sentence to reflect your remand period.

[8] Your punishment must reflect the court's disapproval of your conduct. Women have the right to dignity and freedom from any form of sexual abuse. Rape is the worst form of sexual abuse. The impact of rape is felt on both the body and soul of the victim. Taking all these matters into account, I sentence you to 8 years' imprisonment with a non-parole period of 5 years.

[Handwritten Signature]

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Hon. Mr Justice Daniel Goundar



Solicitors:

Office of the Director of Public Prosecutions for State
Office of the Director of Legal Aid Commission for Accused