

**IN THE HIGH COURT OF FIJI AT LABASA**

**CASE NO: HAC 06 of 2017  
[CRIMINAL JURISDICTION]**

**STATE**

**V**

**VILIKESA RASIGA**

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

**Date of Hearing** : 19 March 2018

**Date of Sentence** : 20 March 2018

**SENTENCE**

1. Vilikesa Rasiga, you were charged by the Director of Public Prosecutions for the following offences;

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**VILIKESA RASIGA**, on the 18<sup>th</sup> day of January, 2017 at Nacekoro, Savusavu in the Northern Division, penetrated the anus of **SAMUEL KRISHNA SAMI**, with his fingers without the consent of **SAMUEL KRISHNA SAMI**.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**VILIKESA RASIGA**, on the 18<sup>th</sup> day of January, 2017 at Nacekoro, Savusavu in the Northern Division, penetrated the anus of **SAMUEL KRISHNA SAMI**, with his penis, without the consent of **SAMUEL KRISHNA SAMI**.

2. You pleaded not guilty to the above charges on 03<sup>rd</sup> May 2017 and your trial was subsequently fixed for one week from 19<sup>th</sup> March 2018. On 15<sup>th</sup> March 2018 you indicated to court that you wish to plead guilty to the charges. When your plea was taken on 19<sup>th</sup> March 2018, you pleaded guilty to both counts and you admitted to the following summary of facts filed by the prosecution;

**SUMMARY OF FACTS**

1. The accused in this matter is Vilikesa Rasiga, a 33 year old unemployed man of Nagigi Village, Northern Division.
2. The victim in this matter is Samuel Krishna Sami, a 29 year old unemployed man of Nacekoro, Savusavu, Northern Division.
3. At about 10am on 18 January 2017, Samuel Krishna Sami was walking along Nacekoro Road, Savusavu when he met the accused who was sitting at a bus shelter along Nacekoro Road. The accused and Samuel Krishna Sami spoke with each other and both of them went across the roadside towards the opposite seaside foreshore to have sex. Samuel Krishna Sami went first and was followed by the accused.

***Count 1***

4. When they both had reached the foreshore Samuel Krishna Sami had changed his mind and refused to have sex with the accused. The accused however forcefully pushed Samuel Krishna Sami to the ground where Samuel Krishna Sami fell down on his back, facing up. The accused pulled off Samuel Krishna Sami's pants and grabbed Samuel Krishna Sami's legs and put them on his shoulders. The accused had then pushed Samuel Krishna Sami's hands against the ground and pulled off his own pants and underwear. The accused then inserted his finger into Samuel Krishna Sami's anus without Samuel Krishna Sami's consent.

## *Count 2*

5. Samuel Krishna Sami tried to push the accused away but the accused overpowered him. When Samuel Krishna Sami tried to yell, the accused covered Samuel Krishna Sami's mouth with his hand. The accused then inserted his erected penis into Samuel Krishna Sami's anus without Samuel Kirhsna Sami's consent and pushed his penis in and out of Samuel Krishna Sami's anus until he ejaculated.
6. The accused then got up and got dressed and apologized to Samuel Krishna Sami. Samuel Krishna also got up and dressed himself and both went their separate ways. Samuel Krishna Sami reached his home and informed his mother about what the accused had done and the matter was reported to the Savusavu Police Station.
7. Samuel Krishna Sami was medically examined on 19 January 2017 at Savusavu Hospital where the medical findings showed he had sustained recent trauma in his anal area suggesting penetrative force (attached: medical report of Samuel Krishna Sami).
8. The accused was arrested and interviewed under caution on 20 January 2017 at the Savusavu Police Station. The accused admitted to having forcefully penetrated Samuel Krishna Sami's anus with his finger and then with his penis, at the material time (Q & A 35-43). The accused admitted he had done so knowing Samuel Krishna Sami had not consenting (Q & A 45). The accused admitted he regretted his actions as sorry (Q & A 63 - 64) (attached: *Record of interview of Vilikesa Rasiga*).
3. Being satisfied that you pleas of guilty are voluntary and unequivocal, you were convicted by this court of the two offences of rape as charged.
4. The maximum sentence for the offence of rape in terms of section 207 of the Crimes Act 2009 is imprisonment for life. It is settled that the sentencing tariff for rape of an adult victim is a term of imprisonment between 7 years and 15 years. (*State v Naicker* [2015] FJHC 537; HAC279.2013)
5. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), reads thus;

*“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*

6. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for the two offences.
7. According to the medical report tendered with the summary of facts, the victim had sustained two tears on his anus and an abrasion on his chest during the incident. You have admitted that you pushed the victim to the ground and that you used force to subdue him.
8. I consider the following as aggravating factors;
  - a) The amount of force used by you to overpower the victim; and
  - b) The injuries sustained by the victim.
9. I consider the following as your mitigating factors;
  - a) You are a first offender;
  - b) You are remorseful; and
  - c) You have cooperated with the police.
10. Your counsel submitted the following as your personal circumstances during the hearing on mitigation;
  - a) you are 35 years old and separated from your wife; and
  - b) you were the sole breadwinner of your family.

11. I take 08 years imprisonment as the starting point of your aggregate sentence for the two offences. Considering the aforementioned aggravating factors, I add 03 years. Now your sentence is 11 years imprisonment.
12. I deduct 02 years of your sentence considering the above mitigating factors. Now your sentence is 09 years imprisonment.
13. Though your plea of guilt was entered at the last moment, by doing so, you have saved the time and resources of this court and of the prosecution to some extent. You have also prevented the victim from having to relive his dreadful experience in court. Moreover, I note that you have made clear admissions during your cautioned interview. In the circumstances, in view of your guilty plea you will receive a one-fourth reduction and your sentence will be reduced by 02 years and 03 months accordingly.
14. I hereby sentence you for an aggregate imprisonment term of 06 years and 09 months for the two offences. I order that you are not eligible to be released on parole until you serve 04 years and 06 months of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
15. As I have applied the two-tiered approach on sentencing to determine your appropriate sentence, the reasoning process that led to your final sentence stated above sufficiently explains why your final sentence is below the established tariff. Had you not pleaded guilty your aggregate sentence would have been an imprisonment term not less than 9 years, which would be well within the tariff.
16. It was submitted that you were arrested for this matter on 19<sup>th</sup> January 2017 and you were in custody in view of this matter since then. Accordingly, you have spent 01 year and 02 months in custody. The period you were in custody shall be regarded as a period of imprisonment already served by you in terms of

section 24 of the Sentencing and the Penalties Act. I hold that the period to be considered as served should be 01 year and 02 months.

17. In the result, you are sentenced to 06 years and 09 months imprisonment with a non-parole period of 04 years and 06 months. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 05 years and 07 months

Non-parole period - 03 years and 04 months

18. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera

JUDGE

Solicitors:

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