

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 133 OF 2014

STATE

v

AMINIO VUKICIGAU SAROGO

Counsel: Ms. R. Uce for State
Ms. V. Narara with Ms N. Pratap for Accused

Date of Judgment: 16th March, 2018

Date of Judgment: 23rd March, 2018

SENTENCE

1. Mr. Sarogo, you were convicted on following count after a fully defended trial.

Statement of Offence

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

Particulars of Offence

AMINIO VUKICIGAU on the 15th day of October 2014 at Sigatoka in the Western Division had carnal knowledge of **ADI LUSIA DONATO**, without her consent.

2. Assessors in their majority opinion found you guilty of rape. Court accepted the majority opinion of Assessors and found you guilty of rape and convicted you accordingly. You now come before this Court for sentence.
3. You are complainant's cousin from her father's side. Complainant boarded the minivan in which you and your friends were traveling to go to the nearby club. On the way, you and your colleagues went to a black market and bought two cartons of beer and started drinking till midnight with the complainant in an isolated place where the van was parked. Then you all went to the night club. Complainant went straight to the bar and had a nip of rum. She then felt dizzy and went straight outside near the poolside to vomit. While she was vomiting, you approached her. You pulled her hand and forced her to go inside the van that was parked near the poolside. Then you pushed her down and undressed her. You did bite her neck and inserted your penis into her vagina and had sexual intercourse for about 10 minutes without her consent.
4. The maximum penalty for Rape is life imprisonment.
5. The tariff for rape of an adult is well settled. The starting point is seven years' imprisonment *Kasim v The State* (Crim App. No. AAU0021j of 1993S) and the tariff is set between 7 and 15 years' imprisonment (*State v Marawa* [2004] FJHC 338).
6. Rape is a serious crime. By prescribing life imprisonment for Rape, the law makers expect Courts to impose harsher punishment on rape offenders. This heinous crime is prevalent in Fiji and the offenders must be punished to denounce and to send a clear message to the community that no such actions will be tolerated by courts. Women must have freedom to socialize in night clubs and their uninhibited manner during such gatherings should not be misunderstood as being an invitation to engage in sexual activity. Not only the offender but

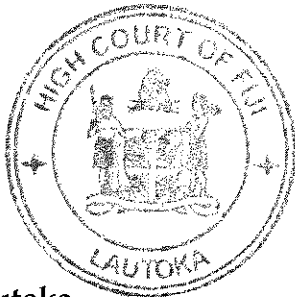
potential offenders must be deterred. The offender must be severely punished to ensure safety and security of all women.


7. In selecting the starting point, the Court must have regard to the objective seriousness of the offence. In doing so, I have considered culpability and harm factors of your offending. You have used force and exploited a vulnerable girl who was vomiting after consuming alcohol in a night club. Having considered the gravity and objective seriousness of the offence, and principles laid down in Koroivuki v State [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 7 years' imprisonment as the starting point.
8. Bearing in mind Section 11(1) of the Constitution and Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.
9. I have considered following aggravating circumstances in light of the Section 4(2) of the Sentencing and Penalties Act and guidelines set out by the Chief Justice Gates in Ram v State [2015] 26; CAV 12.2015 (23 October 2015).
 - i. The victim is related to you. She must have trusted you in drinking alcohol and socialising with you. You breached the trust when you committed this offence.
 - ii. The victim was vomiting after drinks and in a vulnerable situation when you committed this offence. You chose to satisfy your lustful demands without having any regard to her health and wellbeing.
 - iii. You committed this offence under influence of alcohol. You also knew that the victim was drunk when you made her drink beer on your way to the club.
 - iv. The offence was committed in degrading or humiliating circumstances when you stripped her naked in a van parked in a car park of a night club and made her come out of the van without a proper attire.
10. I have considered following mitigating circumstances that your Counsel has submitted to this Court.

- i. You are a 24 year old young offender hailing from a broken family. You are unemployed and you reside with your wife, mother and siblings. You are the sole breadwinner of your family. I have considered your personal circumstances although they have a very little mitigatory value.
 - ii. You are a first offender and have maintained a clear record.
11. I add 2 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 9 years' imprisonment. I deduct 1 year for the above mentioned mitigating factors bringing the sentence to one of 8 years. According to the submission filed by the State, you have been in remand approximately for 454 days. I deduct further 1 year and 3 months to reflect your remand period. Now your final sentence is 6 years' and 9 months imprisonment.
 12. You are a young and first offender. Your rehabilitation potential is something to be reckoned with. Considering Section 18 (1) of the Sentencing and Penalties Act, and principles enunciated in *Tora v State* [2015] FJSC 23; CAV11.2015 (22 October 2015), I impose a non-parole period of 6 years.

Summary

13. **You are sentenced to 6 years and 9 months' imprisonment. You are eligible for parole after serving 6 years in prison.**
14. 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge
Judge

At Lautoka
23rd March, 2018

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Accused