

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 02 OF 2019

BETWEEN : STATE

AND : AMENONI NASILASILA

Counsel : Ms M Khan & Ms M Konrote for the State
: Ms U Baleilevuka & Mr M Anthony for the Accused

Date of Hearing : 16th – 17th September, 2019
Date of Summing Up : 19th September, 2019
Date of Judgment : 20th September, 2019
Date of Sentence Hearing : 21st October, 2019
Date of Sentence : 23rd October, 2019

SENTENCE

- [1] The Accused appears for sentence after he was found guilty of rape contrary to section 207 of the Crimes Act. At trial, the Accused did not dispute that he had sexual intercourse with the victim. His defence was that it was consensual. The Court did not accept the defence case. The Court found that the victim was a truthful witness and believed her account that the Accused used force and that she did not consent to sexual intercourse.
- [2] The victim is in her early twenties. She migrated to the USA when she was in her teens. Currently, she is a flight attendant with an American airline. She first met the Accused in 2017 when he was representing Fiji in the Sevens Rugby tournament in the USA. They developed a friendship and were in contact on social media. That relationship ended in

the beginning of 2018. However, she remained in contact with the Accused because of her past friendship with him. When the incident occurred she was in a new relationship.

- [3] The incident occurred when the victim came to Fiji for a visit. She was scheduled to return to her home on 22 December 2018. On this day she was staying with her aunt at Olosara, Sigatoka. According to the victim, the Accused turned up at her residence with two other male friends. She said the Accused was intoxicated. They had a friendly conversation and she introduced her aunt to him because of his celebrity status. After a while her aunt left their home for town with the two boys who had accompanied the Accused.
- [4] The victim said she stayed back alone with the Accused because she trusted him. They sat on the front porch chatting when she heard notifications on her mobile phone which was inside one of the bedrooms. When she went inside the house, the Accused followed and forced himself on her by pushing her on a mattress and pulling down her undergarment. She pushed him off and ran to the bathroom to get away from him. But before she could lock the door, he forced himself inside the bathroom, pushed her on the floor and raped her. Her pleas for him to stop were ignored by him. He left her in the bathroom in a distressed condition when he realised his friends had returned to the house.
- [5] The victim complained to her boyfriend that the Accused raped her shortly after the incident. The matter was reported and the victim was medically examined the same evening. Apart from abrasions on the genitalia, the victim did not sustain bodily injuries.
- [6] Rape is an intrusive form of sexual violation of another person's privacy. Every person has autonomy over his or her body, and therefore, has a right not to be subjected to degrading violation of one's body without consent. When an intrusive violation occurs to a person's intimate body parts, the harm is to both the body and the soul of the victim. Scars to the body may heal over time, but the psychological damage done to the victim's mental health is long lasting or permanent.
- [7] The victim gave evidence that the offence took both physical and emotional toll on her. After a finding of guilt was made, the victim gave sworn evidence of the emotional impact the incident had on her. She suffers from mental and emotional withdrawal symptoms. That evidence was not challenged by the defence.

- [8] The victim said she was subjected to further victimization on social media by the Accused's fans after she accused him of rape. However, she did not suggest that the Accused is personally responsible for the actions of his fans. She blames his status as a sports celebrity for the attacks on her by his fans.
- [9] It is indeed a sad predicament on our society to further victimize the victim because the Accused is a sports celebrity. His status as a sports celebrity is neither a mitigating nor an aggravating factor. I am mindful that he is to be treated like any other ordinary citizen without giving any prominence or weight to his celebrity status. That assessment is based on the cardinal principle of equality before the law (*State v Batiratu* [2012] FJHC 864; HAR001.2012 (13 February 2012)).
- [10] The legislature has prescribed life imprisonment for the offence of rape. The intention of the legislature is clear. The courts duty is to denounce rape and deter the offender and others from such crime.
- [11] The tariff for rape of an adult is between 7 to 15 years imprisonment (*Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26 April 2018)). The tariff is a guide and not a principle. The ultimate sentence must reflect both the objective seriousness of the offence and the seriousness of the actual conduct of the Accused.
- [12] In assessing the seriousness of the actual conduct of the Accused, I am mindful that he is to be punished for a single episode of rape. The evidence is that although he behaved aggressively towards the victim and was not listening to her pleas to stop, he did not use physical violence. No physical injuries were inflicted.
- [13] The aggravating factors are that the Accused breached the victim's trust, he was intoxicated and he humiliated her by telling her that he wanted a baby and was going to ejaculate inside her while being raped.
- [14] Counsel for the Accused filed detailed mitigation submissions. The Accused is 27 years old and single. He has a daughter who is about two years old. He comes from a humble background. He was brought up by a single mother with two of his siblings. The offence the Accused committed is not a reflection of the values that were taught to him by his mother. Those values in fact helped him to establish himself as a professional sportsman

both locally and internationally. His professional referees have vouched for his hard work, perseverance and endurance. He had an unblemished character until he committed the crime on 22 December 2018. For the Accused, a fall from grace is punishment in itself. Unfortunately, the realisation is late and so is the apology for clemency.

[15] The remand period is less than two months.

[16] I take all these into account. I sentence the Accused to 8 years' imprisonment with a non-parole period of 6 years.

[17] The Accused may appeal to the Court of Appeal within 30 days.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Baleilevuka Law and AC Law for the Accused