

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 85 of 2018

BETWEEN: STATE

PROSECUTION

AND: IOWANI MARIA VIANI

ACCUSED PERSON

Counsel: Ms. A. Vavadakua for State
Mr. E. Radio for Accused

Summing Up: 21st May 2019

Judgment: 21st May 2019

Sentence: 22nd May 2019

SENTENCE

1. Mr. Iowani Maria Viani, you stand convicted to one count of Attempt to Commit Rape, contrary to Section 208 of the Crimes Act, which carries a maximum penalty of ten (10) years imprisonment.
2. It was proved during the course of the hearing that you have waited under the breadfruit tree, when the complainant was returning home after visiting her friend in the early hours of the morning of 2nd of December 2018. She is your mother's cousin. You had told her that you want her. You then pulled her from her hand. With that she fell down to the ground. You had then covered her mouth with one of your hands, and put your other hand inside her underwear and tried to touch her vagina. The complainant managed to bite your hand and found an opportunity to scream and ask for help.

3. Sexual exploitation of women by the people known to them is one of the worst form of crimes. It not only invades the physical freedom and autonomy of the victim, but also causes severe psychological traumas in the mind of the victim. Therefore, offence of attempt to commit rape is a serious offence.
4. The main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also to reflect that the society denounce such crimes without any reservation.
5. Justice Shameem in **Aunima v The State [2001] FJHC 105; HAC0033J.2001s (27 June 2001)** found the applicable tariff to the offence of attempted rape under the repealed Penal Code, which carried the maximum sentence of seven (7) years, as twelve (12) month imprisonment to five (5) years imprisonment. Shameem J said that;

“Applying all these principles, I find that the accepted tariff for Attempted Rape in the Fiji Courts ranges from 12 months imprisonment to 5 years imprisonment. A starting point should then be chosen according to the seriousness of the offending.

6. In **Rusiate Bulimawai vs. The State, criminal appeal no. HAA 0068 of 2005,** Shameem J. mentioned the various factors which would result in higher sentences as follows:

“... In Joji Aunima v. State, criminal appeal 33 of 2000, I identified the tariff for attempted rape as being 12 months imprisonment to 5 years imprisonment. Sentences at the upper end of the tariff should be imposed where gratuitous violence is inflicted, where a weapon is used, where there is a gross breach of trust or where there is a large age gap between the complainant and the offender. In Hari Chand v State (supra) I upheld

a 3 year term for the attempted rape of his daughter-in-law by the offender. There was no gratuitous violence but there was a gross breach of trust.”

7. The maximum punishment to the offence of Attempt to Commit Rape under the Crimes Act is ten (10) years imprisonment. However, the same tariff as stipulated in **Aunima v The State (supra)** has been applied by the court to the offence of Attempt to Commit Rape under the Crimes Act. **(State v Soli - Sentence [2017] FJHC 249; HAC 174 of 2013 (31 March 2017) State v Singh [2015] FJHC 963; HAC27.2013 (7 December 2015) State v Chand [2017] FJHC 744; HAC163.2013 (9 October 2017) State v Din [2012] FJHC 1115; HAC28.2011 (21 May 2012) State v Ismail - Sentence [2014] FJHC 628; HAC115.2012 (26 August 2014)**
8. You found that the complainant was going home alone in the night and then forcefully attempted to rape her. You pulled her hand, making her fall down. Accordingly, I find that you have committed this crime using substantial amount of violence when the complainant was in a position where she could not defend herself or escape from the scene. The complainant had sustained injuries on her face. Therefore, I find the level of harm and culpability is high in the matter.
9. The complainant is your aunty as she is a cousin of your mother. She was fifty (50) years old at the time when this offence took place. You were twenty two (22) years old. The age gap between you and the complainant is substantially high. By committing this crime, you have breached the trust that the complainant had in you as one of her nephews. I find these factors as aggravating grounds.
10. The learned counsel for the defence in his mitigation submissions stated your family and personal background. Apart from your age, number of members in your family, I do not find any significant family or personal circumstances that warrant a discount in the sentencing.

11. You are a first offender. However, there is no evidence or facts before the court about your general reputation in the society and also no information about any significant contribution that you have made to the community. In view of these factors, you are only entitled to a meager discount for your previous character.
12. Having taken into consideration above discussed reasons, I sentence you to a period of four (4) years imprisonment to the offence of Attempt to Commit Rape.
13. Having considered the seriousness of this crime, the purpose of this sentence and your age, I find two (2) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of two (2) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

14. Accordingly, I sentence you for a period of **four (4) years** imprisonment to the offence of Attempt to Commit Rape contrary to Section 208 of the Crimes Act. Moreover, you are not entitled to any parole for a period of **two (2) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

15. You have been in remand custody for this case for a period of nearly eighty (80) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of three (3) months as a period of imprisonment that have already been served by you.
16. Accordingly, the actual sentencing period is **three (3) years and nine (9) months** imprisonment with non-parole period of **one (1) year and nine (9) months**.
17. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Labasa

22nd May 2019

Solicitors

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