

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 7 of 2016

STATE

V

SOSICENI VATUNITU NAULU

Counsel : Ms. P. Lata for the State.
: Ms. J. Singh with Ms. G. Henao [LAC] for the Accused.

Dates of Hearing : 13 and 14 May, 2019
Closing Speeches : 14 May, 2019
Date of Summing Up : 15 May, 2019
Date of Judgment : 16 May, 2019
Date of Sentence : 30 May, 2019

SENTENCE

1. In a judgment delivered on 16th May, 2019 this court found the accused guilty and convicted him for one count of rape as per the following information:

Statement of Offence

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

Particulars of Offence

SOSICENI VATUNITU NAULU, on the 19th day of March, 2015 at Nadi in the Western Division penetrated the vagina of **TORIKA TABUA** with his fingers without her consent.

2. The brief facts were as follows:
3. On 19th March, 2015 the victim Torika Tabua after a grog session at Narewa Village was asked by her uncle to buy some grog and a packet of cigarette.
4. It was about 3 o'clock in the morning when the victim went past the house of the accused she saw him sitting beside his house. The victim knows the accused since they are from the same village. The accused called out to the victim and asked for a cigarette roll. The victim went to the house of an uncle to buy a cigarette roll but no one was there. The victim then gave a roll from the packet of cigarette she had with her to the accused. The accused smelt of liquor.
5. Both went to smoke on the footpath near the victim's grandfather's house. After a while the accused pushed the victim on the footpath and forcefully removed her pants and inserted his finger into her vagina for about 2 minutes. When the accused did this the victim was afraid of him. At this time the accused was holding her hand the victim pushed the accused.
6. When the accused was inserting his finger into her vagina she had shouted by calling her grandmother at this time the accused ran away taking with him her $\frac{3}{4}$ shorts. The victim had to wrap a towel around her waist which she was able to find in the village.
7. When the victim reached home she told her uncle Seremaia everything the accused had done to her. The matter was reported to the police.

8. Both counsel filed written sentence and mitigation submissions for which this court is grateful.
9. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused was 28 years at the time of the offending;
 - b) His level of education is form 5.
10. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs. the State, CAV 0003 of 2014* that the personal circumstances and family background of an accused person has little mitigatory value in cases of sexual nature.
11. The aggravating factors are:
 - a) Breach of Trust

The victim and the accused knew each other and were from the same village. At the request of the accused the victim shared with him a roll of cigarette. The victim trusted the accused so she went to smoke on the footpath with him. The victim was alone and vulnerable the accused breached the trust of the victim by his actions.
 - b) Leaving the victim half naked

The accused was selfish and unrelenting after removing the victim's shorts he took it with him leaving the victim half naked during the early hours of the morning. The victim had to look for a towel to wrap herself before going home.

12. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The accepted tariff for the rape of an adult is a sentence between 7 years to 15 years imprisonment.
13. In *Mohammed Kasim v The State (unreported) Cr. Case No. 14 of 1993; 27 May 1994*, the Court of Appeal had stated:

“We consider that at 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 the starting point.”
14. Bearing in mind the objective seriousness of the offence committed I take 8 years imprisonment (lower end of the tariff) as the starting point of the sentence. I add 5 years for the aggravating factors, bringing an interim total of 13 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I reduce the sentence by 6 months for mitigation. The accused has three previous convictions (although not related to sexual offending) hence he does not receive any discount for good character. The sentence is now 12 years and 6 months imprisonment.
15. I note the accused has been in remand for about 10 months and 23 days. I exercise my discretion to further reduce the sentence for the remand period

by 11 months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence of imprisonment is 11 years 7 months.

16. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
17. Under section 18 (1) of the Sentencing and Penalties Act, I impose 10 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.
18. It is the duty of the court to protect victims from sexual violations of any kind that is the reason why the law makers have imposed life imprisonment for the offence of rape as the maximum penalty. Rape not only affects the physical integrity of a victim but violates the human dignity leaving lifelong scars of psychological devastation bringing about a sense of self blame and hopelessness which does not heal easily even long after the physical injuries have healed.
19. Mr. Naulu you have committed a serious offence against a victim who was a fellow villager who had trusted you. I am sure it will be difficult for the victim to forget what you had done to her. Your actions towards the victim were deplorable and selfish.

20. This court will be failing in its duty if a long term deterrent custodial sentence was not imposed. The victim was alone and vulnerable and you took advantage of this. According to the victim impact statement the victim was emotionally and psychologically affected by the incident.
21. In summary I pass a sentence of 11 years 7 months imprisonment for one count of rape that the accused have been convicted of with a non-parole period of 10 years to be served before he is eligible for parole.
22. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka
30 May, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.