

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 51 OF 2017

BETWEEN : STATE

AND : ETUATE VILIMONI SAUKURU

Counsel : Ms. P. Lata for State
Ms. Bilivalu with Ms. Reddy for the Accused

Date of Hearing : 11th and 12th of June, 2019

Date of Closing Submissions : 12th of June, 2019

Date of Summing Up : 13th of June, 2019

Date of Judgment : 13th of June, 2019

Date of Sentence : 14th of June, 2019

SENTENCE

1. Mr. Etuate Saukuru, you stand convicted for one count of Indecently Annoying a Person, contrary to Section 213 (1) (b) of the Crimes Act, which carries a maximum penalty of one year imprisonment and one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, which carries a maximum penalty of life imprisonment.
2. It was proved during the course of the hearing, that you have poked the backside of the complainant with a stick while she was sleeping in the room on the 21st of March 2015. You have done that in order to call the complainant to come and have a shower with you, which the complainant refused. The complainant then went to sleep again.

When she woke up, she had gone to the toilet to relieve herself. While she was stepping out of the toilet, you came and pushed her into the toilet and forcefully inserted your fingers into her vagina.

3. Rape is one of the most humiliating and distressing crimes. It not only violates the physical self of a person, but also destroys the personal dignity and self-autonomy of a person. Therefore, rape is a serious offence.
4. I now turn my attention to consider the purpose of this sentence. 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 reflect that the society denounce such crimes without any reservation.
5. The tariff for the offence of rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period.
6. The victim impact report states that this crime has adversely affected the complainant emotionally and psychologically. Her life style has changed adversely after this incident. You have committed this crime, when the complainant was stepping out of the toilet. You have waited for her to come out from the toilet. You have used substantial amount of force to push her back into the toilet and pushed her against the wall. Accordingly, I find that you committed this crime at a time when the complainant had no prospect of escaping. Therefore, I find the level of harm and culpability in this crime is high.

7. You were 37 years old at that time, while the complainant was 21 years old. The age difference between you and the complainant was 16 years, which is substantially high. You are related to the complainant through her aunty. By committing this crime, you have breached the trust that she had in you as her relative. I find these grounds as aggravating factors.
8. The learned Counsel for the defence in her mitigation submissions submitted your personal and family background, which I do not find any mitigatory value.
9. There is no evidence or information before this court to consider your general reputation in the society and also no information about any significant contribution that you have made to the community. You have no record of any previous convictions. In view of these factors, I find you are entitled only for meager discount for your previous character.
10. Having considered all these reasons discussed above, I sentence you to a period of nine (9) years imprisonment to the count of Rape, and six (6) months imprisonment to the count of Indecently Annoying a person.
11. Having considered the seriousness of this crime, the purpose of this sentence and your age, I find seven (7) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of seven (7) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence


12. Accordingly, I sentence you for a period of **nine (9) years** imprisonment to the offence of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act and period of **six (6) months** imprisonment to the offence of Indecently Annoying a Person,

contrary to Section 213 (1) (b) of the Crimes Act. Both sentences to be served concurrently. Moreover, you are not entitled to any parole for a period of seven (7) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

13. You have been in remand custody for this case for nearly a period of one (1) month 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 one (1) month as a period of imprisonment that have already been served by you.
14. Accordingly, the actual sentencing period is **eight (8) years and eleven (11) months** imprisonment with non-parole period of **six (6) years and eleven (11) months**.
15. Thirty (30) days to appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka

14th June, 2019

Solicitors : Office of Director of Public Prosecution
Office of the Legal Aid Commission