

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 145 of 2016

STATE

V

BILL JACKSON

Counsel : Mr. T. Tuenuku and Mr. R. Chand for the State.
: Ms. V. Diroiroi [LAC] for the Accused.

Dates of Hearing : 10, 11, 12 June, 2019
Closing Speeches : 12 June, 2019
Date of Summing Up : 13 June, 2019
Date of Judgment : 14 June, 2019
Date of Sentence : 26 June, 2019

SENTENCE

1. In a judgment delivered on 14th June, 2019 this court found the accused guilty and convicted him for one representative count of sexual assault and one representative count of rape as per the following information:

First Count
(Representative count)
Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act of 2009.

Particulars of Offence

BILL JACKSON, between the 11th day of July 2016 and the 12th day of July, 2016 at Mataniqara, Ba, in the Western Division, had unlawfully and indecently assaulted **VACISEVA WATI**.

**Second Count
(Representative count)**

Statement of Offence

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

Particulars of Offence

BILL JACKSON, between the 11th day of July, 2016 and the 12th day of July, 2016 at Mataniqara, Ba, in the Western Division had carnal knowledge of **VACISEVA WATI**, without her consent.

2. The brief facts were as follows:

On 11th July, 2016 at about 7pm the victim reached Ba Town from Nausori, thereafter she went to Vadravadra Village. After getting off the carrier while walking home the victim saw the accused drinking alcohol with some others.

3. The victim knows the accused since they were neighbours, when the accused saw her he told her to wait so that he can accompany her home.

4. As they went near the house of the accused which was before the victim's house the accused asked the victim to accompany him to his house for a drink. The victim refused, saying she was going home.

5. At this time, the accused started pulling the victim's t-shirt, since the victim was unable to push the accused away, she started to scream for help. The accused punched the victim and after holding the collar of her t-shirt tightly forcefully took the victim to his house.

6. When the victim reached the house of the accused she thought of escaping. The victim ran out of the accused house towards the neighbour's house. While running the victim fell towards the fence of the neighbour's house at this time the victim screamed on top of her voice again, she was punched by the accused and brought to the house of the accused for the second time.
7. Inside the house, the accused started kissing the victim, forcefully removed the victim's t-shirt, bra, removed her pants and start licking the victim's vagina. The victim did not like what the accused was doing after this the accused had forceful sexual intercourse with the victim.
8. When the accused had finished, he stood up and walked around the house. After a while, the accused came and sat beside the victim and once again started kissing her mouth and then went on to lick her vagina and then inserted his penis into the victim's vagina and had forceful sexual intercourse with the victim.
9. The victim pretended to sleep, after a while the accused fell asleep when the accused was snoring the victim after wearing her clothes left the house of the accused without closing the door and started running towards her house. At home, the victim told her boyfriend Tevita Buto what the accused had done to her.
10. The victim did not consent to what the accused had done to her. The next day the victim reported the matter to the police. The accused was arrested and charged.
11. Both counsel filed written sentence and mitigation submissions for which this court is grateful.
12. Counsel for the accused presented the following personal details and mitigation on behalf of the accused.
 - a) The accused is 40 years of age married with 7 children;

- b) His wife is unemployed, his youngest child is 11 years and the eldest is 20 years;
- c) He works as a labourer and does odd jobs whenever required;
- d) His 9 year old son attends the Blind School and his 17 year old daughter was involved in an accident who requires continuous care and attention;
- e) The accused was the sole bread winner of the family also looks after his elderly and sickly parents;
- f) The accused is the village policing officer and a youth leader of his village at Vadravadra Village in Ba;
- g) The accused is an active member of the Methodist Church at his village;
- h) The accused seeks mercy, leniency and the forgiveness of the court for his wrong doing.

13. 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.

14. The aggravating factors are:

a) Breach of Trust

The victim and the accused are neighbours and they are known to each other. The accused is also the cousin brother of the victim's boyfriend. At the request of the accused the victim had waited and walked with the accused that night. The victim was alone and vulnerable when they went near the house of the accused he forcefully took the victim to his house and committed the offences.

b) Use of violence

The accused used violence on the victim he punched her twice on her mouth to restrain her.

c) Victim Impact Statement

The victim was traumatized by the incidents she felt ashamed of her in laws after what the accused had done to her.

15. 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.
16. 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.”

17. Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective

period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

18. I am satisfied that the two representative offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore, taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.

REPRESENTATIVE COUNT

19. This court is mindful that the accused faces one representative count of sexual assault and one representative count of rape. The evidence before the court was of more than one occasion the accused had sexually assaulted and raped the victim. The accused cannot be punished for the two (2) occasions of sexual assault and rape mentioned by the victim under the representative counts but for one occasion only (*see Senilolokula v State, Criminal Petition No. CAV 0017 of 2017 (26 April 2018)*).
20. Bearing in mind the objective seriousness of the offences 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, after taking into account all the letters written on behalf of the accused I further reduce the sentence by 6 months for mitigation. The accused has one previous conviction dated 23rd February, 2011 (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.
21. I note the accused has been in remand for about 21 days. I exercise my discretion to further reduce the sentence for the remand period by one

month in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence of imprisonment is 12 years 5 months.

22. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences 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.
23. 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.
24. 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.
25. Mr. Jackson you have committed serious offences against the victim who was your neighbour and 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 cowardly and selfish.
26. This court will be failing in its duty if a long term deterrent custodial sentence was not imposed. It was night time and 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.

27. In summary, I pass an aggregate sentence of 12 years 5 months imprisonment for one representative count of sexual assault and one representative count of rape that the accused has been convicted, with a non-parole period of 10 years to be served before he is eligible for parole.

28. 30 days to appeal to the Court of Appeal.



Sunil Sharma

Judge



At Lautoka

26 June, 2019

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.