

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 310 of 2018

BETWEEN :

STATE

AND :

KELEPI VANAVANA

Counsel :

Ms. B. Kantharia for the State

Ms. L. Ratidara with Ms. E. Soata for the Accused

Hearing on :

04th of June – 10th of June 2019

Summing up on :

12th of June 2019

Judgement on :

20th of June 2019

Sentence on :

16th of July 2019

SENTENCE

1. Kelepi Vanavana, you have been found guilty and convicted of the following offence for which you were charged:

Statement of Offence

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

Particulars of Offence

Kelepi Vanavana, on the 17th day of May, 2018, at Suva, in the Eastern Division, penetrated the vagina of Sereana Tukana, with his penis without her consent.

2. The accused pleaded not guilty to the charge and the ensuing trial lasted for 5 days. The complainant Sereana, The accused's mother Litia Laca, Complainant's neighbor Asenaca

gave evidence for the prosecution while the accused and the doctor who examined the complainant gave evidence for the defense. Though the assessors unanimously found the accused not guilty, having reviewed the evidence, this Court decided to not to agree with the opinion of the Assessors, and found you guilty and convicted you of the said charge.

3. It was proved during the trial that, on the 17th day of May 2018, at Suva, you penetrated the vagina of Sereana Tukana, a person whom you call “Grandmother”, with your penis, without her consent.
4. You are a neighbor of the complainant and also a close relation. The complainant was looking at you as a grandchild.
6. The complainant clearly testified as to how, you pushed her to the floor and raped her. When she held her thighs tight in protest, you punched her on the thighs and forced her to open them up. You were a responsible grown up man in your community. You stated that what you did is what your grandmother wanted you to do. By that statement itself it appears that you are neither remorseful nor ashamed of your illegal, indecent and immoral act.
7. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.
8. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life.
9. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...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.”

10. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

11. In the **State v Lasaro Turagabeci and Others** [1996] FJHC 173; HAC0008.1996S (27 November 1996) Pain J had said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

12. It is safely assumed that the tariff set for rape of an adult is 7 to 15 years of imprisonment. In **Kasim v. State** [1994] FJCA 25; Aau0021j.93s (27 May 1994) the Court of Appeal has held;

“We consider that in 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.”

13. In the light of the above guiding principle, I commence your sentence at 07 years imprisonment for the count of Rape.

14. The aggravating factors are as follows:

- (i) You were a close relation and a neighbor of the complainant. You called her “Bu Sere” and she is elderly, as well as comparatively feeble too. Instead of protecting her you have breached the trust expected from you and the breach was gross.

- (ii) The act was preplanned. As transpired in evidence, you have planned this act for a time and executed it in the pretext of drunkenness.
 - (iii) You took advantage of the complainant's vulnerability and helplessness.
 - (iv) You without any valid reason alleged her to have had a loose life and tried to tarnish her character.
 - (v) As apparent from victim impact report, the complainant has gone and will go through immense hardships and difficulties due to this illegal act of the accused.
15. Considering the aforementioned aggravating factors, I increase your sentence by a further 4 years. Now your sentence is 11 years imprisonment for the count of Rape.
16. Kelepi Vanavana, you are said to be a farmer. State has indicated that you have no previous convictions. Therefore, you are a first time offender.
17. In considering that you are a first time offender and the rest of the mitigating factors submitted on your behalf I deduct two years from the above.
18. Accordingly, I sentence you to a term of imprisonment of 09 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 07 years of that sentence.
19. Section 24 of the Sentencing and Penalties Act reads thus:
"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."
20. You have been in remand custody for this case from 24 July 2018 to 14 December 2018, until you were granted bail by this Court. Thereafter, you have been in remand custody since 06th of June 2019, to this date. Accordingly, you have been in custody for a period of about 06 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 6 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

21. In result, you are sentenced to a term of imprisonment of 09 years with a non-parole period of 07 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 08 years and 06 months.
Non-parole period - 06 years and 06 months.

22. You have 30 days to appeal to the Court of Appeal if you desire so.



At Suva
16th July 2019

Solicitors for the State : ***Office of the Director of Public Prosecutions, Suva.***
Solicitors for the Accused : ***Office of the Legal Aid Commission, Suva.***