

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

Criminal Case No.: HAC 303 of 2018

BETWEEN : STATE

AND : SIRELI KOYAMAIBOLE

Counsel : Mr S Komaibaba for the State
Ms M Chand and Ms L Ratidara for the Accused

Date of Hearing : 13 – 14 July 2020

Date of Summing Up: 15 July 2020

Date of Judgment : 15 July 2020

Date of Sentence : 29 July 2020

SENTENCE

- [1] The offender has been found guilty of rape and assault with the intention to commit rape. The victim is his partner. She is 37 years old. She had been in a living relationship with the offender for about five years. Together they have two children.
- [2] The incident occurred on 15 July 2018 at Muana village, Tailevu. The couple shared a home with the victim's aunt. On the day of the incident the victim was preparing to celebrate her daughter's birthday when the offender approached her for sex. Her response to his request was that she was busy cooking for the celebration. He got agitated and accused her for being unfaithful. She did not react as she knew he had been drinking the previous night. In the evening when the victim entered her room the offender assaulted her and knocked her down. He kicked her while she was on the floor. She called out to her aunt in distress. Her aunt heard the call but she was scared to intervene because she had witnessed violence on the victim by the offender in the past. The offender pushed the victim

on the bed, removed her underwear and raped her. He was forceful. She was too weak to resist. After having sexual intercourse the offender told the victim that that is all he wanted.

- [3] The victim's pain was unbearable. She wanted to go to the hospital but he stopped her. He was concerned that he would be exposed when the doctor will see the victim's physical injuries. She had a bruise on her forehead and swelling on her scalp. Her arm was hurting. Two days later when the offender left the home for work, the victim reported the incident to police.
- [4] Rape is the most serious form of sexual violence. The victim was raped in the security of her home. She was vulnerable because of her dependence on the offender for financial support. The offender was her partner. So there is an element of breach of trust present. Physical violence was inflicted on her resulting in physical injuries. She was held back for two days by the offender from seeking medical assistance. These are significant aggravating factors.
- [5] Very little mitigation value can be derived from the subjective features of the offender. The offender is 34 years old. He has seven active previous convictions since 2010, of which two are of sexual in nature. His last conviction was for theft for which he was sentenced to 10 months imprisonment. The offender has not expressed any remorse for his actions. Instead, he was hostile towards the victim during her testimony.
- [6] It must not be forgotten that the offence of rape is physical invasion of the victim's dignity and security. When a person is raped, the harm done is not only to the physical body but also to the mental or the emotional health of the victim. In this case the victim tried to commit suicide after the offender inflicted sexual and physical violence on her. She feared him and felt a sense of helplessness. I gather from the victim's evidence that she does not want to continue with her relationship with the offender.
- [7] When the victims in modern relationships suffer physical and sexual violence at the hands of their partners, the courts duty is to send a clear message to denounce the crime and deter the offender and other like-minded people from committing acts of violence on their

partners. What could be worse for the victim than being raped by her own husband or partner?

- [8] Finally, a downward adjustment of three months is made for the period in custody on remand. I have considered both the objective seriousness of the offences and the seriousness of the actual conduct of the offender. I have also considered the maximum statutory punishment for the offences and the applicable tariffs.
- [9] The offender is sentenced to 4 years' imprisonment for assault with the intention to commit rape and 14 years' imprisonment for rape of his partner and mother of his two children. Both terms are to be served concurrently, with a non-parole term of 12 years.
- [10] The offender shall be subject of a domestic violence restraining order with no contact with the victim and non-molestation conditions for the rest of his life.



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Hon. Mr Justice Daniel Goundar

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