

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 107 OF 2019S

STATE
Vs
MAKARIO NAQIOLEVU

Counsels : **Mr. M. Vosawale for State**
Mr. I. Romanu for Accused
Hearing : **29 and 30 July, 2020.**
Summing Up : **31 July, 2020.**
Judgment : **31 July, 2020.**
Sentence : **3 August, 2020.**

SENTENCE

1. In a judgment delivered on 31 July 2020, the court found you guilty and convicted you on count no. 1 in the following information:

“Count 1

Statement of Offence

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

Particulars of Offence

MAKARIO NAQIOLEVU on the 14th day of March, 2019 at Namosi in the Central Division, penetrated the vagina of MT with a body spray bottle without the consent of the said MT.

Count 2

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Act 2009.

Particulars of Offence

MAKARIO NAQIOLEVU on the 14th day of March, 2019 at Namosi in the Central Division, assaulted MT thereby causing actual bodily harm to the said MT.”

2. On count no. 2, you pleaded guilty on the same, in the presence of your counsel, on 29 July 2020, prior to the start of the trial. After your conviction on count no. 1, the prosecution submitted the complainant’s (PW1) evidence, given in court on 29 and 30 July 2020, as their facts. Through your counsel, you admitted punching her, at the material time, but appear to deny the other alleged assaults. I have heard her whole evidence during the trial, and I accept her evidence on count no. 2 as credible, and I accept her evidence and version of events. I therefore find you guilty as charged on count no. 2, and I convict you accordingly.
3. The brief facts of the case were as follows. You and the complainant (PW1) were married on 17 January 2004. You are now aged 42 years old and the complainant 41 years old. You two have had four children since your marriage and they are now aged 16, 15, 13 and 11 years old. Since your marriage, you two had resided at your family’s house at a village in Namosi, with your children, mother and brother. It appeared you two’s marriage was loving at first, but you began to quarrel prior to the offendings.
4. According to the complainant, her mother-in-law began to speak ill of her to others, and your mother and brother were complaining that you two’s children were eating a lot thereby straining the family’s finances. It appeared you and the complainant began to quarrel more often culminating in you raping her with a body spray bottle and repeatedly assaulting her

on 14 March 2019. You had been tried and convicted in the High Court for “rape” (count no. 1) and “assault causing actual bodily harm” (count no. 2).

5. Rape, as an offence, is very serious. It carried a maximum sentence of life imprisonment (see section 207(1) of the Crimes Act 2009). This meant that the people of Fiji, through their representatives in Parliament, view the offence of rape as a serious matter and had prescribed the maximum sentence of life imprisonment for it. Rape is a serious invasion of a person’s dignity and privacy. It demeans people. It is the ultimate show of disrespect to a person. Thus, the courts had prescribed a tariff of 7 to 15 years imprisonment for the rape of an adult: see **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; **Bera Yalimawai v The State**, Criminal Appeal no. AAU 0033 of 2003, Fiji Court of Appeal and **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal. The actual sentence will depend on the mitigating and aggravating factors.
6. “Assault causing actual bodily harm”, contrary to section 275 of the Crimes Act 2009, carried a maximum penalty of 5 years imprisonment.
7. The aggravating factors in this case were as follows:
 - (i) **Breach of Trust.** A married couple denotes a union of two consenting adults who love each other. It meant that they had trusted each other. It meant that they had agreed to live together harmoniously and to support each other. In your case, you started off loving each other, resulting in four young children aged between 16 and 11 years old. But the stresses of life often pitted one against the other. Prior to the offendings, you two began to quarrel. For you to rape the complainant with a body spray bottle was the ultimate breach of trust. Furthermore, for you to repeatedly assault her before and after the rape was totally uncalled for. You have to accept that you have to be punished by a prison sentence for your offendings.
 - (ii) By offending against your wife, you showed no regard to her right as a human being, her right to safety and her right to a happy life.

8. The mitigating factors were as follows:
 - (i) Now at the age of 42 years, you are a first offender;
 - (ii) You had been remanded in custody since 16 March 2019, awaiting trial. That was approximately 1 year 4 months 17 days ago.

9. On count no. 1 (rape), I start with a sentence of 7 years imprisonment. I add 3 years for the aggravating factors, making a total of 10 years imprisonment. I deduct 1 year 5 months for time already served while remanded in custody, leaving a balance of 8 years 7 months. For being a first offender, I deduct 1 year 7 months, leaving a balance of 7 years imprisonment. On count no. 1(rape), I sentence you to 7 years imprisonment.

10. On count no. 2 (assault causing actual bodily harm), I sentence you to 3 years imprisonment.

11. The summary of your sentences are as follows:
 - (i) Count No. 1 (rape): Accused: 7 years imprisonment.
 - (ii) Count No. 2 (assault): Accused: 3 years imprisonment.

12. Because of the totality principle of sentencing, I direct that the above sentences are to be made concurrent to each other, making a final total sentence of 7 years imprisonment.

13. Mr. Makario Naqiolevu, for raping and assaulting your wife, as alleged in count no. 1 and 2 of the information, I sentence you to 7 years imprisonment, with a non-parole period of 5 years, effective forthwith.

14. The complainant's name is permanently suppressed to protect her privacy.

15. In addition to the above, a permanent domestic violence order with standard non-molestation conditions is issued for the safety of the complainant. This order will remain subject to the orders of this court.

16. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **I. Romanu, Barrister & Solicitor, Suva.**