

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

CRIMINAL CASE NO. HAC 68 OF 2018

BETWEEN : **STATE**

AND : **EMOSI WASEIGUSUNA**

Counsel : *Ms. L. Latu for the State*
Ms. V. Diroiroi for the Accused

Hearing on : *11th March 2020*
Sentence : *19th August 2020*

SENTENCE

1. Mr. Emosi Waseigusuna, you were charged as follows;

COUNT 1

Statement of Offence

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

Particulars of Offence

Emosi Waseigusuna, on the 26th day of March 2018 at Raviravi, Ba, in the Western Division, had carnal knowledge of Divya Darshika Chand, without her consent.

2. Emosi Waseigusuna, you have freely and voluntarily pleaded guilty to the above counts of Rape on 10th of February 2020, before the commencement of the trial. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.
3. Thereafter, on the 11th of March 2020, the State read over the Summary of Facts and the said Summary of Facts were well considered by you and your counsel beforehand.

You having understood, agreed and accepted the said summary of facts to be true and correct and have taken full responsibility for your actions.

4. The Summary of Facts filed by the State discloses that:

The accused, Emosi Waseigusuna, 22 years old, unemployed of Raviravi, Ba is charged with one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act, 2009. The accused raped the victim, Divya Darshika Chand, 24 years old, Data Entry Clerk of Raviravi, Ba, by having carnal knowledge of the victim, without her consent.

Incident

On the 26th of March, 2018, at approximately 6.15 am, the victim left her home for work. The victim's home is located in a cane belt area about 500 metres away from the main road.

While walking to the main road, the victim met the accused on the tramline and the accused greeted her by saying "Bula". The victim said good morning to the accused, walked past the accused and kept on walking towards the main road.

As she came near an electric post along the road, the victim heard footsteps behind her. The victim turned back to see who it was, when the accused grabbed her from behind and pressed the victim's mouth with one of his hands. The victim struggled with the accused and managed to pull the accused's hand from her mouth. The victim tried to kick the accused's private parts but was unsuccessful and she fell to the ground. As she fell to the ground, the victim shouted for help on the top of her voice but the accused again covered the victim's mouth with his hand.

The accused then dragged the victim beside the cane field. The accused pushed the victim to the ground and pressed the victim's mouth. The victim continued to struggle with the accused. The accused then came on top of the victim with the victim still trying to kick him away while lying down on the ground. The accused then punched the victim's left thigh, pulled down the victim's black tights and black panty. The victim at this point was still shouting for help.

The accused then pulled down his pants and the victim saw that the accused was holding his erect penis and the accused slightly inserted his penis into the victim's vagina for about 3 to 4 times. The victim was still struggling and pleaded with the accused not to kill her as she has a daughter and also lied to the

accused that she had HIV/AIDs to make the accused stop what he was doing. The accused stopped what he was doing and he picked up his flip flops and ran away towards the tramline.

The matter was reported to Police whereby investigations were carried out and the accused was arrested on the 28th of March, 2018.

The victim was medically examined on 26th of March, 2018 where bruises were found on her chin and right side of her neck. There were fresh bruises with some bleedings noted on the victim's right knee and right lower leg.

5. I find that the above summary of facts support all elements of the charge in the Information, and find the charge proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you of the count of Rape contrary to section 207 (1) and (2) (a) of the Crimes Act 2009, as charged.
6. The maximum sentence for the offence of Rape contrary to section 207 (1) and (2) (b) of the Crimes Act 2009 is an imprisonment for life.
7. The tariff for the offence of Rape of an adult is an imprisonment term between 7 to 15 years. [**State v Marawa**, [2004] FJHC 338]
8. The aggravating factors are that this was the most serious form of rape and also committed on a stranger ^{on} by a public road. If not curtailed our roads would be unsafe for a female to walk on.
9. The mitigation factors are that the accused is 24 years old and is a first time offender. Though he has 3 other convictions, none would operate as previous convictions. In addition he has pleaded guilty at the very first opportunity showing his remorse.
10. In adopting the guidelines provided by **State v Marawa** (Supra) and **Koroivuki v State** [2013] FJCA 15; AAU0018.2010 (5 March 2013) and the objective seriousness of the offense, I select the 08 years of imprisonment as the starting point of your sentence.
11. In consideration of the aggravating factor set out above I enhance your sentence by further 2 year and now your sentence stands at 10 years of imprisonment.
12. In consideration of the factors set out in mitigation I will deduct 1 year and now your sentence would be 09 years of imprisonment. Furthermore, you will be entitled to a discount of 1/3 due to your plea of guilty at the first opportunity. Therefore your final sentence is 06 years of imprisonment. In consideration of all the material and

circumstances of this case, I set the non-parole period at 4 years allowing you to be released on parole, after the expiration of 4 years.

13. You have been arrested on the 28th of March 2018 and were granted bail on the 10th of May 2018. Thereafter you failed to appear in court and a bench warrant was issued. Later you were arrested and produced and your bail was cancelled on the 16th of November 2018. Though you have been in remand since then, you have served a sentence of 13 months in between. You were produced in court on the 11th of March 2020 and thereafter you were not produced until today. It is indicated that you were released from the prison and rearrested for this matter and produced accordingly. Therefore I will deduct 4 months from your final term considering that as already served. The remainder you'll have to serve would be 05 years 08 months and you'll be entitled for the consideration of parole after 3 years 08 months.

14. You will have thirty (30) days to appeal to the Court of Appeal, if you so desire.



Chamath S. Morais
JUDGE

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