

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]
CRIMINAL CASE NO. HAC 106 OF 2018

BETWEEN : **STATE**

AND : **KEVERIELI VUNISA**

Counsel : **Mr. T. Tuenuku for the State**
Ms. G. Henao for the Accused

Hearing on : **03rd – 04th of November 2020**
Summing up on : **10th of November 2020**
Judgment on : **13th of November 2020**
Sentence on : **19th of February 2021**

SENTENCE

1. Mr. Keverieli Vunisa, you have been found guilty and convicted of a count of Rape contrary to section 207 (1) and 2 (b) of the Crimes Act.
2. You pleaded not guilty to the charges and the ensuing trial lasted for 2 days. The complainant Lavenia Savai, her aunt Lavenia Vunivesilevu and Nurse Practitioner Ms. Melaia Busa gave evidence for the prosecution while you gave evidence, in defense. The three assessors by majority found the accused not guilty to the alleged count of Rape. This court having reviewed the evidence, disagreeing with the opinion of the majority of assessors, overturning their findings, found you guilty and convicted you of the said count.
3. It was proved during the trial that, being the husband of Ms. Lavenia Savai how you raped her by inserting a bottle of Paracetamol into her vagina, when she refused to have sex with you and slept.

4. 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.
5. 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.
6. 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.”

7. 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”.

8. 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.”

9. The accepted tariff for a rape of an adult is 7 – 15 years of imprisonment. (**Rokolaba v State** [2018] FJSC CAV 0011.2017)

10. In consideration of the principles laid down in **Koroivuki v State** [2013] FJCA 15; AAU0018.2010 (5 March 2013) and **Rokolaba v State** (supra), I commence your sentence at 7 years of imprisonment.
11. The most serious aggravating factor is as that there was a gross breach of trust.
12. Considering the aforementioned aggravating factor, I enhance your sentence by further 1 year. Now your sentence is 8 years of imprisonment.
13. Your counsel has submitted that you have no previous convictions or any pending cases and has maintained a clean character.
14. In considering of your clean character before, I deduct a year from the above.
15. Accordingly, I sentence you to a term of imprisonment of 7 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, and having duly considered all the relevant factors, I order that you are not eligible to be released on parole until you serve 5 years of that sentence.
16. 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.”
17. You were arrested on the 23rd of May 2018. You were in remand till granted bail on the 06th of July 2018. Therefore, you have been in custody for a period of almost 6 weeks. I will deduct that as the period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 6 weeks should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.
18. In result, you are sentenced to a term of imprisonment of 7 years with a non-parole period of 5 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 6 years and 10 months and 2 weeks.
Non-parole period - 4 years and 10 months and 2 weeks.

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



Chamath S. Morais
JUDGE

At Lautoka
19th February 2021

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