

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Crim. Case No: HAC 14 of 2022

STATE

vs.

SOLOMONI QURAI

Counsel: Mr. L. Baleilevuka with Ms. S. Tivao for the State
Ms. L. David for the Accused

Date of Hearing: 30th May to 01st June 2022

Date of Closing Submission: 02nd June 2022

Date of Judgment: 06th June 2022

Date of Sentencing & Mitigation: 07th June 2022

Date of Sentence : 14th June 2022

SENTENCE

Introduction

1. Mr. Solomon Quirai, after trial this court found you guilty and convicted you for the count of Rape contrary to Section 207 (1) and (2) (b) of the Crimes Act, 2009.

Circumstances of the offending

2. The complainant Salata is married to your de facto partner's brother Viliame. As you and your partner Litia had no house of your own, your bother-in-law and the complainant invited you and Litia to live in their house and have volunteered to help you to build a house on Viliame's land. You having taken advantage of the kind hospitality was residing in the Complainant's house.
3. On the 25th December, 2021 a drinking session of Kava, Rum and other liquor was arraigned in a shed about 25 feet away from Viliame's house. This Christmas celebration continued to the early hours of the 26th. Close to mid-night, Viliame and Salata have returned to their house and taken their little daughter into their room and retired for the night in their bed room. Salata only in a towel has fallen asleep while breastfeeding her child and Viliame too has fallen asleep on the left side of the mattress. The two mattresses were placed close to each other. Shortly after Salata had so fallen asleep, she had been awakened by a pain she felt in her vagina. When she woke up, she found you inserting two fingers into her vagina and moving them in and out of her vaginal passage. The charge of rape you were convicted is in respect of an act which appears to be an opportunistic offending where you have pursued to satisfy a lustful desire upon seeing Salata's exposed body whilst breast feeding and a sleep in a vulnerable state.

Sentencing regime

4. The maximum penalty prescribed for Rape contrary to Section 207 (1) and (2) (b) of the Crimes Act is life imprisonment as this is undoubtedly is considered to be a very serious offence. The tariff is between 7 years and 15 years imprisonment. Determining the said applicable tariff Justice Gates C.J., in Rokolaba v State [2018] FJSC 12; CAV0011.2017 (26 April 2018)

held that,

*“[40] **Kasim** was decided in 1994. Tariffs for sexual offences and specially rape have moved upwards as befits such a serious offence under the Crimes Act, and which in turn reflects the community’s increasing yet justified sense of outrage and horror for the crime. Presently the tariff for rape of an adult has been set between 7 and 15 years imprisonment - **State v. Marawa** [2004] FJHC 338. In really bad cases the tariff may have to be exceeded..”*

5. Rape is a physical invasion committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.
6. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, her fear of Qurai has increased and whenever her husband is not around she calls her husband or other family members to come and be with her at home. She seems to be suffering from sleeplessness and keeps thinking of what you did to her. She says that after the incident she ‘felt embarrassed to give myself to her husband’. She is unable to get about with her small business of making BBQ alone at the stall and she has to get her husband’s aunty to be with her as she is frightened of Qurai. It is clear from the victim impact statement that your offending has had a significant psychological impact on the complainant which must be considered in sentencing.
7. The aggravating factors are as follows:
 - (i) Serious Breach of Trust. You, were provided with accommodation at the complainant’s house and they treated you more as a brother though you were the de facto partner of the sister-in-law. You occupied a position of trust in relation to your brother-in-law’s wife. Such a relationship renders sexual activity morally wrong and abhorrent. Now it is proved that you raped her. That night she was breast

feeding the child and was asleep in her own room and was vulnerable also to your seniority in age and the de facto familial standing due to your affinity with her sister-in-law Litia. The culture and the rich traditions of the Fijian society expects you to protect the young especially a mother nursing a little child.

- (ii) You took advantage of her vulnerability and sexually exploited the complainant within her own home upon intruding into her room at night. As echoed in many a Judicial pronouncement, sexual exploitation within their own home by known persons has become a social menace. Therefore, in the circumstances of this case I find this offending to be appalling and perverse. She was raped in the safety of her own home so to say, by a person from whom she was entitled to expect protection and respect. You have violated the trust which the complainant and her husband have placed in you and abused that position of trust.
- (iii) You took advantage of the complainant's vulnerability and abused the kind hospitality offered to you.
- (iv) You have violated her body and you had no regard to her right as a human being to live an unmolested and peaceful life.
- (v) You had caused untold misery to her family.

8. As for mitigating factors I see not many factors but the following factors will be considered in mitigation:

- (i). Qurai you are now 34 years of age in a de facto relationship and a vendor by profession. Unfortunately, these are all personal circumstances and cannot be considered as mitigating circumstances.

- (i) You have not used or resorted to the use any violence and this appears to have been more of an opportunistic act,
- (ii). As per the Antecedent Report filed, it is noted that there are 13 previous convictions out of which only 5 are within 10 years of the present offending and those are also not offences of a sexual nature. However the, Court will not be able to considers you as a being a person of previous good character.

Sentence

- 9. Your offence is serious and only a custodial sentence can be justified. The least possible sentences I can impose, having regard to the aggravating and mitigating factors of the case, will be as follows. For the said offences of rape, I pick and start with a sentence of 8 years imprisonment. I add a modest 2 years for the aggravating factors, making a total of each sentence 10 years imprisonment. For the mitigating factors I deduct 1 year, leaving a balance of 9 years imprisonment.
- 10. In view of the reasons discussed above, I sentence you to a total period of nine (09) year's imprisonment for the count of rape for which you stand convicted.

Non-Parole period

- 11. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a six (06) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for six (6) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
- 12. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was the your virtual brother-in law's wife compels me to state that the purpose of this sentence is to punish you in a manner that is just in all the circumstances of this case, protect the community, deter like-minded offenders and

to clearly manifest that the court and the community denounce what you did to the complainant that night.

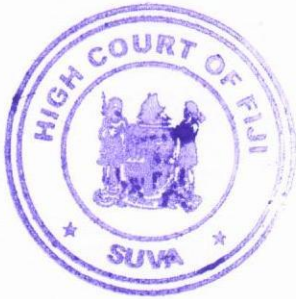
Head Sentence

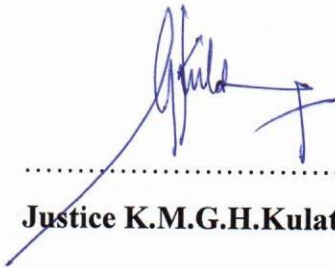
13. Accordingly, I sentence you to a period of nine (09) years imprisonment for the count of Rape as charged and convicted. However, you are not entitled to parole for six (06) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

14. You were in arrested remanded for this case on 29th December 2021 and had been in remand up to date. You have been in custody for a period of nearly 06 months. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 06 months be considered as imprisonment that you have already served.
15. Accordingly, the actual sentencing period is eight (08) years and six (06) months imprisonment with a non-parole period of five (05) years and six (06) months.
16. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Section 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competent Court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.

17. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.




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Justice K.M.G.H.Kulatunga

At Suva

14th June 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused