

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 116 OF 2021S

STATE

VS

WILLIE TUICAUCAU

Counsels : Ms. W. Elo for State.
Mr. O. Verebalavu for Accused.
Hearings : 14 and 15 November, 2022.
Judgment : 18 November, 2022.
Sentence : 25 November, 2022.

SENTENCE

1. In a judgement delivered on 18 November 2022, the court found you guilty and convicted you on the following counts in the following information:

“Count One

Statement of Offence

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

Particulars of Offence

WILLIE TUICAUCAU *on the 11th day of April, 2021 at Samabula in the Central Division, penetrated the vagina of N.N. with his tongue, without the consent of the said N.N.*

Count Two

Statement of Offence

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

Particulars of Offence

WILLIE TUICAUCAU on the 11th day of April, 2021 at Samabula in the Central Division, had carnal knowledge of ***N.N.*** without the consent of the said ***N.N.***

Count Three

Statement of Offence

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

Particulars of Offence

WILLIE TUICAUCAU on the 11th day of April, 2021 at Samabula in the Central Division, penetrated the vagina of ***N.N.*** with his fingers, without the consent of the said ***N.N.***”

2. The brief facts of this case were as follows. On 10 April 2021 (Saturday), the complainant and her partner organized a belated Christmas party at their house in Namuka Street, Samabula. The partner’s work colleagues were invited to the party. The complainant and her partner met the accused and two colleagues, while out shopping that morning. When they returned home, they started drinking alcohol from 10 am to 1 pm. Other work colleagues arrived after 1.30 pm, and they began drinking alcohol, while others drank grog. The BBQ started at 4 pm, and everyone enjoyed food, alcohol and yagona. The accused was so drunk that he knocked out in the house near the complainant and her partner’s bed.
3. The party concluded between 10 pm to 11 pm, when everyone returned to their homes. The accused was still sleeping near the complainant and her partner’s bed. After midnight, the complainant and her partner returned to their bed and

slept. In the early morning on 11 April 2021 (Sunday), the accused crept to where the complainant was sleeping. He then slowly licked the complainant's vagina, wherein his tongue penetrated the same, without her consent (count no. 1). When discovered, the accused then forcefully inserted his penis into the complainant's vagina, without her consent (count no. 2). Later, the accused then inserted his fingers into the complainant's vagina, without her consent (count no. 3). When committing the above rapes, the accused well knew the complainant was not consenting to the same.

4. The offence of rape carried a maximum sentence of life imprisonment (see Section 207 (1) of the Crimes Act 2009.). Parliament therefore views the offence as a serious one. It violates the dignity of a person. It is an unwarranted intrusion into the privacy of a person. It is an ultimate act of showing utter disrespect to a person. Therefore those who commit this offence, must expect a lengthy prison sentence to restore the balance, the harmony and atonement to the victim. For the rape of an adult, that is, anyone over 18 years old, the tariff is a sentence between 7 to 15 years imprisonment. **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993; **Viliame Tamani v The State**, Criminal Appeal No. AAU 025 of 2003, Fiji Court of Appeal. The final sentence will depend on the aggravating and mitigating factors.
5. The aggravating factors in this case were as follows. First, you breached the trust the complainant and her partner had in you by inviting you to party at their home on 10 April 2021. You drank and ate at their home. They accommodated you. Put simply, they were nice and civil to you. However, you repaid their kindness by raping her three times on 11 April 2021. You realise you will have to serve a custodial sentence for the offences you had committed. Second, you had caused untold miseries to the complainant and her family. She had lost her confidence in people, and she is still being

emotionally traumatized by what you did to her. Thirdly, you had shown no regard to her right as a human being and her right not to be harmed.

6. The mitigating factors were that you had not offended in the last 10 years at the age of 55 years. You had been remanded in custody from 11/4/21 to 27/10/21, a period of approximately 6 months.
7. On count no. 1 (rape), I start with a sentence of 7 years. For the aggravating factors, I add 5 years, making a total sentence of 12 years imprisonment. For time already served while remanded in custody, I deduct 7 months, leaving a balance of 11 years 5 months imprisonment. For having not committed any offence in the last 10 years, I deduct 1 year 5 months, leaving a balance of 10 years imprisonment. Your final sentence is 10 years imprisonment.
8. On count no. 2 (rape), I repeat the above process and sentence.
9. On count no. 3 (rape), I repeat the above process and sentence.
10. The summary of your sentences are as follows:
 - (i) Count No. 1 - Rape : 10 years imprisonment.
 - (ii) Count No. 2 - Rape : 10 years imprisonment.
 - (iii) Count No. 3 - Rape : 10 years imprisonment.
11. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, making a final total sentence of 10 years imprisonment.
12. Mr. Willie Tuicaucau, for offending against the complainant, as alleged in count no. 1, 2 and 3 of the information, I sentence you to 10 years imprisonment, with a non-parole period of 6 years imprisonment, effective forthwith.
13. The complainant's name is permanently suppressed to protect her privacy.

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



Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused : **Verebalavu Lawyers, Suva.**