

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 166 of 2022

STATE

vs.

VILIMONI VESI

Counsel: Ms. P. Ram for the State
Ms. L. Ratidara & Ms. L. Tavaiqia for the Accused

Date of Judgement: 16th June, 2023

Date of w/submissions: 22nd June, 2023

Date of Ruling: 27th June 2023

SENTENCE

Introduction

1. Mr. Vilimoni Vesi, 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 Sekolatika Juliana Kivi is your own first cousin or *tavale*. Sekola was 26 years of age at the time you committed this offence and you were 27 years. On the 19th February, 2022 both of you were in Tokou Village, in Levuka. On the 18th both of

you were enjoying drinking throughout the night but separately. You and your mother lived in the house of the victim. On the 19th morning when Sekola was in her room somewhat in the state of intoxication and was asleep when you entered her room and inserted your finger into her vagina without her consent. You took advantage of her vulnerability that morning. No doubt you are first cousins whom you claimed to have been very close to each other. However, that does not justify you to act in that manner. Immediately after the incident Sekola left her house and stayed away for 2 days with her niece and then left Levuka. The evidence clearly demonstrated that Sekola was distressed and depressed due to this incident and your conduct. You have taken advantage and acted in serious violation of Sekola's privacy and person whilst being in her own house.

Sentencing Regime

3. The maximum penalty for the offence of **Rape** under Section 207 (1) and (2) is life imprisonment. As the law stands now the tariff for the rape of an adult victim is between 7-15 years imprisonment. Determining the said applicable tariff 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."*

4. 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.

Victim Impact Report

5. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. She had not been herself and wondering why her. She is not comfortable around relatives and avoids gatherings. She has been avoiding the village and is hurt and disappointed that some of my close relatives and siblings act

as though nothing happened. She suffers from feelings depression and hurt all the time and is not able to share it or show it around close relatives especially siblings that still supported the accused after knowing the truth. This has made her cut off close off she does not trust anyone. It is clear from the victim impact statement that your offending has had a very significant and long-lasting psychological impact on the minor a vulnerable complainant which must be considered in sentencing.

6. The aggravating factors are as follows:

- (i) Serious Breach of Trust. You, are the first cousin and is elder to her. You lived in her house and she treated you as her own sibling. Such a relationship renders physical invasion under these circumstance morally wrong and abhorrent. Now it is proved that you raped her. Whilst in her own room she was vulnerable also to your seniority in age, authority and the familial standing. The culture and the rich traditions of the Fijian society expects you to protect and not to violate her person or privacy.
- (ii) You took advantage of her vulnerability and the physical invasion of this nature is demeaning and I find this offending to be perverse. She was raped in the safety of her own house, by a person from whom she was entitled to expect protection and respect. You have violated the trust which the complainant placed in you and abused that position of trust.
- (iii) You have violated her body and privacy and you had no regard to her rights as a human being and the respect and dignity as your younger cousin.
- (iv) You had caused untold misery to her.

7. As for mitigating factors the following may be considered:

- (i) You are now 29 years of age and is in a *de-facto* relationship with one child and expecting another. You are working as a machine operator with an income of \$250. You have cooperated with the police.
- (ii) You have not used or resorted to the use of any violence and this appears to be more of a spur of the moment act,
- (iii) There are no previous convictions as per your antecedent report nor are there any similar pending cases. As such you will be considered a person of previous good character.

Sentence

8. 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 7 years imprisonment. I add a modest 2 years for the aggravating factors, making a total of each sentence 9 years imprisonment. For the mitigating factors inter alia especially for his previous good character I deduct 1 ½ years, leaving a balance of 7 ½ years' imprisonment.

9. In view of the reasons discussed above, I sentence you to a total period of 7 ½ year's imprisonment for the count of rape for which you stand convicted.

Non-Parole Period

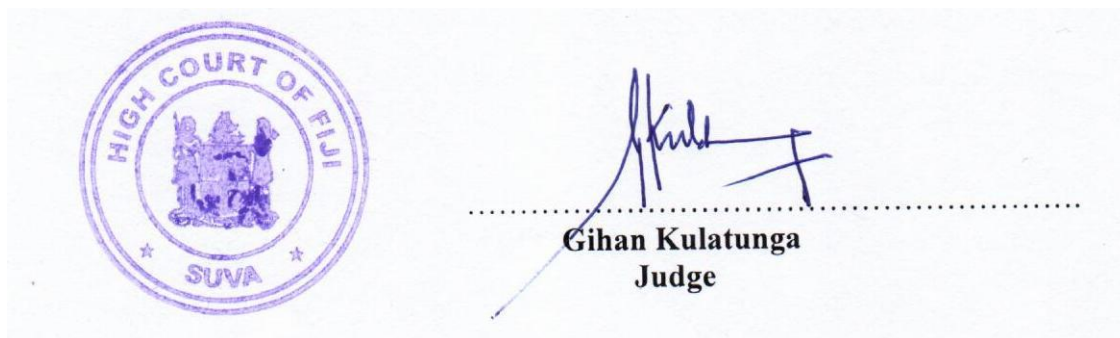
10. Having considered the circumstances of committing this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a three (03) years and six (6) months non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for three (03) years and six (06) months pursuant to Section 18 (1) of the Sentencing and Penalties Act.

11. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who is the your cousin, who considered you as her own sibling, 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 and to clearly manifest that the court and the community denounce what you did to the complainant that morning.

Actual Period of the Sentence

12. You were in arrested remanded for this case on 02nd May 2022 and was in remand until you were granted bail on 28th June 2022. You have been in custody for a period of nearly 01 month and 26 days. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 02 months be considered as imprisonment that you have already served.

13. Accordingly, the actual sentencing period is seven (07) years and four (04) months imprisonment with a non-parole period of three (03) years and four (04) months.
14. 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.
15. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Suva
27th June 2023

Solicitors
Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for the Accused