

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO HAC 80 OF 2019

STATE

v

ELIKI KAE

Counsel: Ms S. Swastika for Prosecution
Ms L. Volau for Defence

Date of Judgment: 19 October 2023

Date of Sentence Hearing: 26 October 2023

Date of Sentence: 31 October 2023

SENTENCE

1. Mr. Eliki Kae, you stand convicted after trial of one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009. The information read as follows:

Statement of Offence

RAPE: Contrary to section 210 (1) and [2] [a] of the Crimes Act, 2009

Particulars of Offence

ELIKI KAE on the 21st day of December 2018, at Lautoka in the Western Division penetrated the vagina of TAVAITA SENIBAI, without her consent.

2. The facts of the case are that the victim was residing at her uncle's house as her parents were abroad. You had been a frequent visitor to her house. You had reasons to believe that the victim is a person with slow mentality. Having waited for her uncle and aunt to leave for church you entered her house drunk without permission. You pulled her into her uncle's room and started to torture her by slapping and closing her mouth. You forcefully took her clothes off holding her down tightly. You penetrated her vagina with your penis forcefully. When she started crying you told her to be quiet. You tightly covered her mouth and warned her not to respond when her cousin was calling from outside.
3. The maximum sentence for Rape is life imprisonment. The sentencing tariff for adult rape ranges from 7 years to 15 years' imprisonment (Rokolaba v State [2018] FJSC 12 (26 April 2018)). The starting point in an adult rape case is at least seven years' imprisonment. However, there are cases where the proper sentence may be substantially higher or substantially lower than that starting point, depending on the particular circumstances of the case [Kasim v State [1994] FJCA 25; Aau0021j.93s (27 May 1994) (State v Marawa [2004] FJHC 338)].
4. In selecting a sentence that fits your offence, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I would also have regard to the maximum penalty prescribed for the offence, the current sentencing practice and the applicable sentencing guidelines issued by the courts. Having considered the seriousness of the offence and the harm caused to the victim, I would select

the appropriate starting point. The final sentence will be determined after making due adjustments for the aggravating and the mitigating circumstances.

5. Sexual offences are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive condign punishment to mark the society's outrage and to denounce sexual abuse in our society.
6. When the victim is vulnerable due to his/her intellectual incapacity, she/he must receive special care and protection from the society. The legislature has given the courts power to punish people who exploit the vulnerability of such persons. The people who deal with intellectually handicapped persons must be careful before engaging in sexual activities because they do not have mental capacity to give informed consent to such activities.
7. Having taken into consideration the seriousness of the offences and the harm caused to the victim, I select a starting point of 7 years from the bottom range of the tariff for Rape.
8. I identify the following aggravating and mitigation factors with the help of the submissions filed by the Counsel and guidelines set out in **Ram v State** [2015] FJHC 26 (23 October 2015):

Aggravating factors:

(a). You had been a frequent visitor to victim's house. The victim trusted you as her neighbour. You entered her house when her guardians were away to commit the offence. You have betrayed her trust.

(b). The victim was vulnerable due to her poor intellectual capacity. You exploited her vulnerability.

(c). You inflicted violence. The trauma caused to the victim will remain with her for the rest of her life.

(d). You did silence the victim and, by instilling fear in her, you suppressed her voice to call for help.

(e). The offence was committed with a degree of pre-panning.

(f). You committed the offence after consuming alcohol.

Mitigating Factors:

(b). You are a first offender. You have maintained a clear record over the past.

9. I add 4 years and 6 months to the starting point of 7 years for the above mentioned list of aggravating factors to arrive at an interim sentence of 11 years and 6 months' imprisonment. I reduce 1 year for mitigating factors to arrive at a sentence of 10 years and 6 months' imprisonment.
10. According to the State, you have spent approximately 1 year and 6 months in remand. I would consider your remand period as part of your sentence already served and deduct 1 year and 6 months to arrive at a final sentence of 9 years' imprisonment.
11. You are young and a first offender. Taking into consideration your age, potential for rehabilitation and the gravity and the impact of the offence on the society, I impose a non-parole period of 7 years.
12. Summary

Mr. Eliki Kae, you are sentenced to an imprisonment term of Nine (09) years with a non-parole period of Seven (07) Years. You are eligible for parole and remission when you have served seven years in the correction facility.

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



Aruna Aluthge

Judge

31 October 2023

At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State

Legal Aid Commission for Defence