

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO HAC 31 OF 2020

STATE

v

JOSEVA MARIO

Counsel: Ms S. Prakash for State

Mr V. Anand for Defence

Date of Sentence Hearing: 05 April 2024

Date of Sentence: 11 April 2024

SENTENCE

1. Mr Joseva Mario, you stand convicted after trial of one count of Rape contrary to Section 207 (1) and (2) (c) of the Crimes Act 2009.
2. The facts of the case briefly were that the victim who was in her fifties, was drinking beer alone at Ba Riverside where you were also drinking. You and your friends called her to them but she declined. Then you approached her with your friends and punched her from the back.

Then you dragged her to the abandoned Club House and punched her again. You took off her clothes while she was struggling. When she was sitting down naked you forced her to suck your penis. When she refused, you put your penis in her mouth. She without sucking, bit your penis causing you to scream and run away. She was able to free herself and run naked towards the river to be rescued by fishermen.

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. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 7 years from the bottom range of the tariff for adult Rape.

7. I identify the following aggravating and mitigation factors with the help of the submissions filed by the Counsel and the guidelines set out in Ram v State [2015] FJHC 26 (23 October 2015):

Aggravating factors:

- (a). You committed this offence on a vulnerable victim who was drunk.
- (d). You assaulted the victim not only sexually but also physically when you punched her and stripped her naked in a public place. She had received some injuries.
- (c). You committed the offence after consuming alcohol.

Mitigating Factors:

- (a). You are a laborer, 44 years of age and married with three children. You are the sole breadwinner of the family looking after the elderly and sickly mother.
- (b). You have no active previous convictions and has maintained a clear record since 2004. The character references tendered on your behalf show that you were a person of good character before you committed this offence.
- (c). You have cooperated with the police investigators.
- (d). You have committed this offence way back in 2014. Nearly a decade has elapsed since then. Without fault on your part, the charge against you had been hanging above your head so long and I must take into account the mental agony you must have been going through over the years.
- (e). You received injuries when your penis was bitten by your victim.
- (f). The victim in her evidence said that she was prepared to forgive you.


8. I add 2 years to the starting point of 7 years for the above mentioned list of aggravating factors to arrive at an interim sentence of 9 years imprisonment. I reduce 2 year for the mitigating factors to arrive at a sentence of 7 years imprisonment.
9. According to the State, you have spent only two days in remand. I would consider your remand period as part of your sentence already served.
10. You are technically a first offender. Taking into consideration your age, potential for rehabilitation, the gravity of the offence and the impact of the offence on the society, I impose a non-parole period of 5 years.

11. Summary

Mr. Joseva Mario, you are sentenced to an imprisonment term of seven (07) years with a non-parole period of five (05) years. You are eligible for parole and remission when you have served five years in the correction facility.

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




Aruna Aluthge
Judge

11 April 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State

Fazilat Shah Legal for Defence