

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 81 OF 2023

STATE

v

KOLINIO NASILOKIA

Counsel : Ms S. Prakash for Prosecution

Accused in Person

Date of Judgment : 20 June 2024

Date of Sentence : 24 June 2024

SENTENCE

1. Mr. Kolinio Nasilokia you stand convicted after trial of three counts of Rape contrary to Section 207 (2)(1) (b) of the Crimes Act 2009. The relevant parts of the information read as follows:

Count One

Statement of offence

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

Particulars of Offence

KOLINIO NASILOKIA on 23rd February 2019, at Lautoka in the Western Division, penetrated the vagina of ALESI KURISARU, with his fingers without her consent.

Count Two

Statement of offence

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

Particulars of Offence

KOLINIO NASILOKIA on 23rd February 2019, at Lautoka in the Western Division, penetrated the vagina of ALESI KURISARU, with a TV remote controller without her consent.

Count Three

Statement of offence

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

Particulars of Offence

KOLINIO NASILOKIA on 23rd February 2019, at Lautoka in the Western Division, penetrated the vagina of ALESI KURISARU, with a screwdriver handle without her consent.

Count Four

Statement of offence

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

Particulars of Offence

KOLINIO NASILOKIA on 23rd February 2019, at Lautoka in the Western Division, penetrated the vagina of ALESI KURISARU, with his penis without her consent.

2. The victim, 40 years old, was a Financial Clerk in a reputed company. On 23 February 2019, she was on leave from her work. Her mother went to church. After washing clothes, she entered the bedroom, wearing only her bath towel. You secretly entered her house from the back door. She was shocked to see you inside her bedroom. She yelled at the top of her voice. When she attempted to run out of the room and she fell. While she was lying on the floor, you placed a knife over her neck and threatened to kill her if she continued to yell. You shoved socks inside her mouth and inserted your fingers up above

her mouth. You kept asking for money. When she went to the kitchen you grabbed her and pushed her to the gas stove. You then dragged her from the kitchen into her bedroom. You tied both her hands on her back with a wire and a belt and her mouth with a bed sheet. You made her lie down on the bed and started sexually harassing her.

3. You opened her legs and then inserted your fingers into her vagina. You brought a TV remote controller and a screwdriver from the living room. You inserted the remote controller inside her vagina for a few minutes. You then inserted the handle of the screwdriver in her vagina while she was screaming in pain. In the process, you kept punching her upper thighs. In the struggle, she received injuries all over her body and in her genitalia.
4. When she went to a doctor for medical treatment, the doctor took her to the police station where her complaint was recorded. She could not cope with the pressure of the ordeal she went through. She was traumatised and felt unsafe in her own house. She moved to the USA because she feared for her safety and never returned.
5. In selecting a sentence that fits your offence, the Court must regard the proportionality principle enshrined in the Constitution and the Sentencing principles in the Sentencing and Penalties Act 2009 (SPA). The Court must have regard to the maximum penalty prescribed for the offence, the current sentencing practice and the applicable sentencing guidelines issued by the courts. Considering the seriousness of the offence and the harm caused to the victim, an appropriate starting point will be selected within the sentencing range. After making appropriate adjustments for the aggravating and mitigating circumstances, the final sentence will be determined.
6. 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)¹. The starting point in an adult rape case is at least seven years imprisonment. The starting point in a violent adult rape case is eight years' imprisonment. There are cases where the

¹ [2018] FJSC 12 (26 April 2018).

proper sentence may be substantially higher or substantially lower than that starting point, depending on the particular circumstances of the case².

7. 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 sentences must operate as a powerful deterrent factor to prevent the commission of such offences in future. The offenders must be punished harshly to mark society's outrage and to denounce sexual abuse in our society.
8. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence for all three offences.
9. Considering the seriousness of the offence and the harm caused to the victim, I select a starting point of 8 years from the bottom range of the tariff reserved for violent adult Rape cases.
10. I have identified the following aggravating and mitigation factors with the help of the submissions filed by the Counsel and the guidelines set out by the Supreme Court :

Aggravating factors:

- (a). The offence was committed in a home invasion having entered the house secretly without the victim's permission.
- (b). The victim received injuries all over her body and in her genitalia. Insertion of objects like TV remote controllers and screwdriver handles into the genital area is inhuman, degrading, and torturous. The violence accompanying the rapes included tying of hands at her back, shoving socks in her mouth, repeated punching and threats to kill at the point of a knife.

² Kasim v State [1994] FJCA 25; AAU 0021j.93s (27 May 1994); State v Marawa [2004] FJHC 338]

- (c). The offences were committed with a degree of pre-planning. You had socks in your possession when you entered the house.
- (d). The prolonged nature aggravated the offence. You spent approximately two hours in the house committing those offences, subjecting the victim to an awful experience.
- (e). The impact of the offences on the victim is enormous and long-lasting. Although the State filed no victim impact report, the victim in her evidence described how she was psychologically affected. She said she was traumatised, depressed, and had flashbacks of the ordeal. She found it difficult to cope up with the pressure and felt unsafe in her own house. She decided to leave her old mother, home, and finally homeland. She moved to the USA and never returned.

Mitigating Factors:

- (a). You were given ample time and offered legal assistance from the Legal Aid Commission which you declined. You are 34 years of age and single. There are no significant mitigating factors in your favour.
 - (b). You were forgiven by the victim when you expressed remorse after the commission of the offences. However, your conduct in Court did not indicate that you are genuinely remorseful of your wrongdoings. You receive no discount on account of good character as you have 18 previous convictions, 12 of which are active, albeit not of sexual nature.
 - (c). You have been in remand for this matter approximately for one year.
11. I add 4 years for the above-mentioned aggravating features to arrive at an aggregate sentence of 12 years and deduct one year for mitigation. One year is further deducted for the remand period to arrive at an aggregate sentence of 10 years imprisonment for both offences.

12. Your potential for rehabilitation is not that promising given your previous convictions. To balance your chances of rehabilitation with the State's concerns of community protection, a non-parole period of 8 is warranted.
13. The State made an application that you be declared a habitual offender in terms of Sections 10, 11 and 12 of the Sentencing and Penalties Act (SPA). Section 11(1) of the SPA lays down two prerequisites for the exercise of discretion to declare an offender a habitual offender. The first is that the offender should have been convicted of an offence in the nature prescribed under Section 10. The offence of Rape is covered under that Section. The second is that the sentencing court having regard to the offender's previous convictions for offences of a similar nature must be satisfied that the offender constitutes a threat to the community ^[2].
14. The State has filed a record of previous convictions (RPC) issued by the Criminal Records Office (CRO). You have 18 previous convictions but most of them are for property-related offences. Six of them are more than 10 years old. Within the past ten years, you have had 12 active previous convictions, most of which were for property-related offences. Although the previous convictions were not of a similar nature (sexual offences) as the present offences, there was evidence in this case that you intended to rob the house of the victim. You demanded money and took the victim's laptop and the phone, although they were later returned to the complainant. Having considered the previous convictions and the way the present offences were committed, I am satisfied that you constitute a threat to the community. Therefore, you are a suitable candidate to be declared a habitual offender.
15. **Summary**
 - i. Mr. Kolinio Nasilokia, you are sentenced to an aggregate imprisonment term of ten (10) years with a non-parole period of eight (08) years. You are eligible for parole and remission after you have served eight (08) years in the correction facility.
 - ii. You are declared a habitual offender.

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



Aruna Aluthge

Judge

24 June 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecutions for State

Offender in Person