

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

HAC 66 OF 2021

BETWEEN: STATE

PROSECUTION

AND: TEVITA DEVE SERU

ACCUSED

Appearances: Ms S Naibe (ODPP) for the State
Mr S Drole (Messrs Maisamoa & Associates) for Accused

SENTENCE

1. Tevita Deve Seru you were found guilty and convicted after trial for the offence of Rape contrary to section 207(1) and (2)(a) of the Crimes Act, 2009.
2. The facts as accepted by the court are between 9th & 10th January 2020 between 7pm - 12am, the victim Vika Ili (30yrs, domestic duties) was drinking liquor at Korowere Vatukoula with her sister (Sera Ranadi) and others. At 12am they called for their transport and it was almost 1am when the transport came. Then Vika, Sera, one Kesa and Kesa's husband boarded their transport and they went to low cost where Kesa and her husband got off then Vika and Sera got off at Loloma. They went towards their home after getting off. Vika Ili then went towards the sink of their house. Vika felt hot and went to sit beside the sink. The sink is just beside her house and where the street light is located and was on that night. Vika lit a cigarette whilst sitting beside the sink and then felt her head spinning then dozed off. Whilst sleeping Vika felt something being done from behind her back. She woke up and opened her eyes and look around. Vika saw you (Tevita Seru) standing behind her. Vika then she asked you why you did that to her as she knows your wife. At that point in time Vika noticed her own pants and panty being half way down to her knees and you were positioned from the rear trying to insert your penis into her vagina. Vika felt something from behind her whilst she was bent over. She was wearing a t/shirt at that time. She also saw you wearing a t/shirt on and your pants were also half way down. Whilst Vika's back was

towards you and bent over the sink you then inserted your penis into her vagina. Vika also felt then that her thighs were wet. She then pushed you back, spoke to you and also tried to get up. You then disappeared when Vika was trying to get up. She got up and also pulled up her pants. Vika didn't consent to you inserting your penis into her vagina. Vika then came looking for you because she noticed that her purse and mobile phone were missing. She managed to locate you drinking liquor at a flower bed near your house. She asked you about her phone and purse which you denied knowing anything about. Vika then went to Vatukoula police station to report that you raped her. She was then taken to Tavua hospital thereafter for medical examination. Vika had confirmed to the court that the street lights near her home about 3 meters away was on and lights coming from her neighbors home about 5 meters away also facing towards the sink in their house was also on. Both lights were really bright and that is how she was able to see and identify you that night.

3. The offence of Rape contrary to section 207(1) and 2(a) of the Crimes Act 2009 carries a maximum imprisonment term of life imprisonment.
4. In Kasim v State [1994] FJCA 25; Aau0021j.93s (27 May 1994), it was established that the tariff for rape on adults would be a starting point of 7 years without any mitigating or aggravating circumstances. It further appears according to Rokolaba v State [2018] FJSC 12 (26 April 2018) that sentencing tariff for adult rape ranges from 7 years to 15 years imprisonment.
5. In Fiji, the incidence of rape and other sexually related crimes has alarmingly increased recently. Rape victims suffer greatly both physically and emotionally from this heinous crime. When someone's basic right to bodily autonomy is infringed upon and their confidence is lost, it is extremely unsettling and erodes their sense of security.

In cases of rape and other sexual offenses, the courts have a bounden duty to impose a punishment that acts as a clear warning to the offender and also send a message to other members of society who might harbor similar intentions that the courts will not put up with such conduct. Moreover, it is essential that the penalty suitably expresses the community's disapproval and functions as a powerful denunciation of the offense.
6. Taking into account the objective seriousness of the offending, I commence your sentence at 7 years imprisonment.

7. For the aggravating factors which I consider as being the breach of trust being neighbors, prevalence of rape and other sexual related offences in community and taking advantage of the victim when she was drunk and unconscious to conduct your lustful behavior, I increase your sentence to 10 years imprisonment.
8. This being your first offence and being of good character before the offending and family background, I reduce your sentence and arrive at a term of 8 years imprisonment.
9. Your bail in this matter was revoked on 7th February 2024 as you failed to comply with your bail conditions notably to appear in court and answer the charge. You were remanded in custody since then. Your time in custody (approximately 5 months) will be deducted from your sentence and that will be taken as time already served in custody.
10. Your final sentence is therefore 7 years 7 months imprisonment.
11. Bearing in mind the circumstances of offending, your background and potential for rehabilitation and the impact of such offending on society, I impose on you 5 years 6 months imprisonment as non-parole period.
12. **You are therefore ordered to serve a sentence of 7 years 7 months imprisonment with a non-parole period of 5 years 6 months imprisonment.**
13. 30 days to appeal to the Court of Appeal.



Samuela D Qica

Judge

High Court – Lautoka

Wednesday, 3rd July 2024

