

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 123 of 2020

STATE

V

TANIELA LOTU

Counsel : Mr. Joeli Nasa for the State
Mr. Singh for the Accused

Dates of Hearing : 1st and 2nd October 2024

Closing Speeches: 28 July, 2023

Date of Judgment : 15th October, 2024

Date of Sentence : 7th November , 2024

SENTENCE

(The name of the victim is suppressed she will be referred to as "A.V")

1. In a judgment delivered on 31st July, 2023 this court found the accused guilty and convicted him for one count of rape as charged.
2. The brief summary of facts were as follows:
 - a. The victim (18 years of age, student of Reliance Road Lovu Lautoka The victim and The accused is a 26 year old man unemployed of Vunato settlement The accused and victim are not known to each other, The victim was returning from the Lautoka city after doing research at the meganet computer shop in town with her younger brother when they met the accused at the Vunato short cut to reliance road, Lovu.

- b. The accused grabbed the victim's sunglasses from behind and pulled her hand and dragged her into his small tin house.
 - c. The accused forcefully lay the accused on top of a bed inside the tin house and forcefully remove her pants and panty whilst lying on top of her. The accused then pulled down his pants and inserted his penis into the vagina of the victim without her consent. The accused forcefully had sexual intercourse with the victim for about five minutes when he heard the brother of the victim called her sisters name outside the Tin house.
 - d. The accused than stopped and jumped out of the bed, pulled up his pants and went away. The victim than slowly came out of the bed a put on her clothes and went to grandmother and brother who were both outside of the tin house.
3. The state counsel filed written sentence submissions and the defence counsel filed mitigation for which this court is grateful.
 4. The following personal details and mitigation was submitted by the counsel for the accused:
 - a. The accused is now 32 years old; He was born on 12th .06 1992.
 - b. He is married and has a child aged 5 years old.
 - c. He is a farmer and earned \$560.00 a week.
 - d. He resides in Keiyasi Sigatoka, Navosa.
 - e. He is a first offender and seeks the mercy of this court.
 - f. Looks after his elderly father as his mum as passed away.
 - g. Seeks leniency of the court;
 5. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj -vs.- The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

AGGRAVATING FACTORS

6. The following aggravating factors are obvious in this case:
 - a. Breach of Trust

The victim and the accused were police officers and both were accommodated at the same police barracks. The victim trusted the accused that is why she had opened the door of her room and allowed

the accused to enter. The accused grossly breached the trust of the victim by his action

b. Victim was vulnerable

The victim was vulnerable, alone, helpless and unsuspecting the accused took advantage of this and sexually abused the victim in her room.

c. Prevalence of the offending

There has been an increase in sexual offence cases by people known to the victim. The accused was bold and undeterred in what he did to the victim

d. Victim was alone

The victim was alone at the time of the offending.

TARIFF

7. The maximum penalty for the offence of rape is life imprisonment and the accepted tariff for the rape of an adult is a **sentence** between 7 years to 15 years imprisonment.

8. In *Mohammed Kasim v The State (unreported) Cr. Case No. 14 of 1993; 27 May 1994*, the Court of Appeal had stated:

"We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than the starting point.

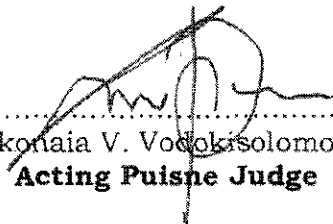
9. Bearing in mind the objective seriousness of the offence committed I take 7 years imprisonment (lower range of the scale) as the starting point of the sentence. The sentence is increased for 02 years for the aggravating

factors, and reduced for 01 year and 06 months for mitigation and good character (character references taken into account). Although the personal circumstances and family background of the accused has little mitigatory value, however, his good character and other mitigation has substantive

value. Your remaining term of imprisonment is 7 years and 6 months imprisonment

10. I note that the accused has been in remand for 27 days, in exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 1 month as a period of imprisonment already served. The final sentence of imprisonment for one count of rape is 7 years and 5 months imprisonment
11. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
12. Under section 18 (1) of the Sentencing and Penalties Act, I impose a non-parole period of 6 years and 5 months to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case. However, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.
13. Mr. Lotu you have committed a serious offence against the victim. You took advantage of the victim's vulnerability. I am sure it will be difficult for the victim to forget what you had done to her. Due to your lust you did not care about the consequences of your actions.
14. Being a father of a 5 year old. You should have known better instead of protecting the victim you violated her. You have not only brought shame on yourself and your family but to the entire relatives of yours. This court will be failing in its duty if a long term deterrent custodial sentence is not imposed. Your actions obviously have caused the victim to live a life of fear and has totally changed the victim's life where the victim would fear young men come into close contact with her.

15. In summary, I pass a sentence of 07 years and 05 months imprisonment with a non-parole period of 06 years and 05 months for one count of rape to be served before he is eligible for parole.
16. 30 days to appeal to the Court of Appeal.


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Sekonaia V. Voio
Acting Puisne Judge



At Lautoka
7th November, 2024

Solicitors

For the State: Office of the Director of Public Prosecutions
For The Accused: Office of the Legal aid Commission