

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 338 OF 2011S

STATE

VS

LUKE MAYA

Counsels : **Ms. L. Koto for the State**
Accused in Person
Hearings : **25th and 26th March, 2013**
Summing Up : **27th March, 2013**
Judgment : **27th March, 2013**
Sentence : **28th March, 2013**

SENTENCE

1. In a judgment delivered yesterday (ie. 27th March, 2013), the court found you guilty and convicted you, on the following charge:

Statement of Offence

RAPE: Contrary to Section 207(2)(a) of the Crimes Decree,
No. 44 of 2009.

Particulars of Offence

LUKE MAYA on the 8th day of October, 2011 at Nasinu in the Central Division had carnal knowledge of **A. K.** without her consent.

2. The brief facts were as follows. On 8th October, 2011, after 9 am, you went to the complainant's house, when she was hanging out her clothes. You were drunk at the time. The complainant was previously your defacto-wife, but at the time, you were separated from each other. You forcefully dragged her to her bedroom, assaulted her, and without her consent, you forcefully had sexual intercourse with her. At the time, you knew she was not consenting to sex with you. After that, you slept in her bedroom for one hour, and then you left her house. She later reported the matter to the police, and you were subsequently charged with rape.
3. As a criminal offence, rape is always treated as a serious offence. Consequently, it carries the maximum sentence of life imprisonment. For adults, the tariff is a sentence between 7 to 15 years imprisonment: see **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; **Bera Yalimawai v The State**, Criminal Appeal No. AAU 0033 of 2003, Fiji Court of Appeal; **Navuniani Koroi v The State**, Criminal Appeal No. AAU 0037 of 2002, Fiji Court of Appeal and **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal. The actual sentence will depend on the aggravating and mitigating factors.
4. The aggravating factors, in this case, were as follows:
 - (i) When you committed this crime, you showed utter disregard to the complainant's right to a peaceful quality life. You invaded her home, you invaded her peace of mind and had no regard whatsoever for her views on whether or not she wanted to be intimate with you. You couldn't care less whether or not she wanted intimacy with you.
 - (ii) You committed this crime when your children were around. You had no regard for their peace of mind. In fact, one of the children saw what you were up to, and attempted to commit suicide in the bathroom, only to be saved by another sibling. You did not act as a good role model for your children.

5. The mitigating factors were:
 - (i) At the age of 43 years, this is your first sexual offence;
 - (ii) You have been remanded in custody since your first appearance in the Nasinu Magistrate Court on 17th October, 2011 to today, that is, approximately 1 year 5 months 10 days ago.

6. I start with a sentence of 10 years imprisonment. For the aggravating factors, I add 3 years, making a total of 13 years imprisonment. For the mitigating factors, I deduct 2 years, leaving a balance of 11 years imprisonment.

7. In summary, for raping the complainant on 8th October, 2011, I sentence you, Luke Maya, to 11 years imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith.

8. In addition to the above and to protect the complainant and her children, you are ordered not to threaten, intimidate or harass them and/or behave in an abusive, provocative or offensive manner towards them, from inside or outside prison, after serving your sentence. The above order is a permanent order, and applies to you and/or your agents. Any violation of the above order will amount to a contempt of court, and possible consecutive prison sentences.

9. There is a permanent suppression of the complainant's and her children's name, to protect their privacy.

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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecutions, Suva**
Solicitor for Accused : **Accused in Person**