

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 079 of 2011

BETWEEN: THE STATE COMPLAINANT

A N D: VUNIYANI SOVAU ACCUSED

Counsel : Ms. M. Fong with Ms. D. Kumar for the State
: Ms. V Tamanisau with Ms. P. Chand for the Accused

Date of Hearing : 17th, 18th, 19th and 20th February 2014

Date of Summing Up : 21st February 2014

Date of Judgment : 24th February 2014

Date of Sentence : 15th April 2014

SENTENCE

1. You, Vuniyani Sovau stands convicted for one count of 'Rape' contrary to section 207 (i) (2) (a) of the Crimes Decree No. 44 of 2009 as this court concurred with the unanimous opinion of guilty by the assessors after a full trial.
2. The Statement of Offence and the Particulars of the Offence are as follows:

RAPE: contrary to section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of the Offence

VUNIYANI SOVAU on the 5th day of March, 2011, at Nasinu in the Central Division, had carnal knowledge of VANI VEIUSAYAKI without her consent.

3. According to the facts, as revealed during the trial, you had forcefully taken the complainant to your nephew's house at Omkar Road, Narere by directing the taxi driver not to go to Namadi Heights as urged by the complainant. The complainant was raped inside a room of your nephew's house. The complainant told that you slapped her when she said the driver to drop her at Namadi. The taxi driver confirmed this saying that he heard noises like 'slappings' at least three times from the 'back' whilst driving to Narere. The complainant had managed to escape from your nephew's house when you fell asleep after the forceful sexual intercourse and rushed to Nabua police station to report the incident.
4. The maximum penalty for the offence of Rape is life imprisonment. The tariff ranges from 7 – 15 years when an adult victim is involved. (see **Mohammed Kasim v The State**, *Criminal Appeal No. AAU 0021j.93S (1994) (FJCA 25, (27 May 1994)*; **Bera Yalimaiwai v The State**, *Criminal Appeal Case No. AAU 0033 of 2003*, **Navuniani Koroi v The State**, *Criminal Appeal Case No. AAU 0037 of 2002*, **Viliame Tamani v The State**, *Criminal Case Appeal Case No. AAU 0025 of 2003*, **The State v Bijendra** *Criminal Case No. HAC 127 of 2011*).
5. Having considered the background of the offending, this court takes a starting point of 7 years imprisonment.
6. When evaluating the aggravating factors of this instance, the "breach of trust" factor will first come into light. You were working with the complainant in the same working place for a considerable period of time and thus, her trust had been betrayed by your conduct. You had used violence by slapping her face to take her to your nephew's place. The Victim Impact Report is indicative of the emotional trauma caused to the complainant as a result of your conduct. She is scared of males inclusive of her own husband and always seeks her mother's company as she is afraid of being alone. She had lost her job after this incident and had to move to her village in Tailevu

because of the shame and embarrassment. These aggravating factors will increase your sentence from 3 years imprisonment.

7. Even though you claim to be a first offender in your mitigation, you have one previous conviction in operation for "Assault Occasioning Bodily Harm". You are 39 years of age; married and having four children. You are the sole bread winner of the family. Your contention to consider your state of 'intoxication' as a ground of mitigation is plainly refused. You did not show any remorse towards your acts during the trial. Nevertheless, having considered the nature of the only previous conviction in operation, this court thinks it fit to give you some concession for your previous good character. Therefore, for all the mitigatory factors urged, you will receive a 2 years reduction of imprisonment.
8. Now your final sentence will be 8 years imprisonment.
9. Vuniyani Sovau, for the offence of 'rape' committed on 5th of March 2011, I sentence you to 8 years imprisonment with a non-parole period of 6 years.



Janaka Bandara
Judge

At Suva

Office of the Director of Prosecution for State

Office of the Legal Aid Commission for Accused