

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 219 OF 2012S

STATE

VS

ISEI KORODRAU

Counsels : Mr. T. Qalinauci and Ms. D. Kumar for State
Mr. M. Fesaitu and Ms. K. Vulimainadave for Accused

Hearings : 7, 8 and 9 July, 2014

Summing Up : 10 July, 2014

Judgment : 10 July, 2014

Sentence : 11 July, 2014

SENTENCE

1. Yesterday, the court delivered a judgment, finding you guilty as charged, on the following information, and convicting you accordingly, on the same:

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: *Contrary to section 313 (1)(b) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

ISEI KORODRAU on the 11th of February, 2011 at Mariko Street, Raiwai in the Central Division, broke into and entered the dwelling house of A. B with intent to

commit theft and at the time of the burglary had an offensive weapon, namely a kitchen knife.

SECOND COUNT

Statement of Offence

THEFT: *Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

ISEI KORODRAU on the 11th of February 2011, at Mariko Street, Raiwai in the Central Division, dishonestly appropriated \$525.00 cash, a 24 carat gold chain worth \$800.00, a Samsung mobile phone worth \$450.00 and a Sony digital camera worth \$600.00 all to the value of \$2375.00, the property of A. B with intent to permanently deprive the said A. B of the property.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

ISEI KORODRAU on the 11th of February 2011, at Mariko Street, Raiwai in the Central Division, had carnal knowledge of A. B without her consent.

2. The brief facts were as follows. On 10 February 2011, the accused, aged 19 years old, came from a Village in Tailevu, to visit his friends in Raiwaqa. He ended up consuming liquor with friends, until late into the night. In the early hours of 11 February 2011, he started wondering around nearby streets in Raiwaqa and Nailuva Road. He came to the complainant's property. The complainant, aged 29 years old, was fast asleep in her bedroom, in her apartment.
3. The accused unlawfully entered her apartment, as a trespasser, with intent to commit theft. He grabbed a kitchen knife from the complainant's kitchen. He later forcefully woke up the complainant, by putting the kitchen knife to her neck. He demanded money from her. He later stole the items mentioned in Count No. 2. He later raped the complainant twice, before fleeing from her house, in the early morning of 11 February 2011.

4. I will first deal with the offence of “rape” (Count No. 3). “Rape”, as an offence, had always been viewed seriously by society and the law makers of this country. Consequently, the maximum penalty for “rape” is life imprisonment (section 207(1) of the Crimes Decree 2009). Case laws have set the tariff for “rape” 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 Koroj 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. However, the final sentence will depend on the aggravating and mitigating factors.

5. “Aggravated burglary” carried a maximum sentence of 17 years imprisonment (section 313 (1)(b) of the Crimes Decree 2009). Case laws have set the tariff for “aggravated burglary” a sentence between 2 to 3 years imprisonment: see **Viliame Gukisuva v The State**, Criminal Appeal No. HAA 117 of 2007, High Court, Suva; **State v Peni Vulisoko**, Criminal Case No. HAC 118 of 2013S, High Court, Suva and **State v Josese Caginaliwala & Others**, Criminal Case No. HAC 293 of 2011S, High Court, Suva.

6. “Theft” carried a maximum sentence of 10 years imprisonment (section 291(1) of Crimes Decree 2009). Case laws have set the tariff for “theft” a sentence between 2 months to 3 years imprisonment: see **Navitalai Seru v The State**, Criminal Appeal No. HAA 84 and 85 of 2002S, High Court, Suva; **State v Jona Saukilagi**; Criminal Case No. HAC 21 of 2004S, High Court, Suva and **State v Josevata Lesumailodoni & Others**, Criminal Case No. HAC 094 of 2013S. As I've said before, the final sentence will depend on the aggravating and mitigating factors.

7. In this case, the aggravating factors, were as follows:
 - (i) When you offended against the complainant, you basically tortured her, by rudely awakening her from her sleep, put a kitchen knife to her neck, dragged her to her sitting room, and pinned her body to the floor by strangling her neck. Then you demanded money, went through her apartment, as if it was yours, and stole her properties, as mentioned in Count No. 2. You had no regard whatsoever to her property rights.

- (ii) You then proceeded to force yourself on her sexually. While doing the same, you were still holding a kitchen knife to her neck. You had no regard to the security of her person. Then you proceed to rape her. This was her home and castle, but you choose to disregard that, and deliberately invaded her privacy. She asked you to leave her alone, and go. But you choose to rape her again, and commit further indecencies on her. You were very cruel to her, and you deliberately disregarded her right to be free from any form of violence, even in her own home.
- (iii) Your above actions showed the coward that you are. You deliberately preyed on the vulnerable and the defendless, in our community. You showed no mercy to the complainant while offending against her. You deliberately took what was not yours. You had no regard to the complainant, as a human being. You have caused the complainant much miseries and financial loss. She had to pick up her life, and move on. You will have to pay for your misdeeds with the loss of your liberty. I hope you will not complain, because your sentence will meet the injustices you have caused her.
8. The mitigating factors are as follows:
- (i) You are 23 years old, single with no children;
- (ii) You have been remanded in custody from 26 June 2012 to 8 November 2013, a period of approximately 1 year 5 months.
9. I start with the more serious offence of "rape" (Count No. 3). I start with a sentence of 15 years imprisonment. For the aggravating factors, I add 4 years imprisonment, making a total of 19 years imprisonment. For being remanded in custody for 1 year 5 months, I deduct the same from 19 years, leaving a balance of 17 years 7 months imprisonment. For the other mitigating factor, I deduct 7 months, leaving a balance of 17 years imprisonment. For raping the complainant, I sentence you to 17 years imprisonment.
10. On the "aggravating burglary" charge (Count No. 1), I start with 2 years imprisonment. I add 3 years for the aggravating factors, making a total of 5 years imprisonment. I deduct 2 years for the mitigating factors, leaving a balance of 3 years imprisonment.
11. On the "theft" charge (Count No. 2), I repeat the above process and sentence.

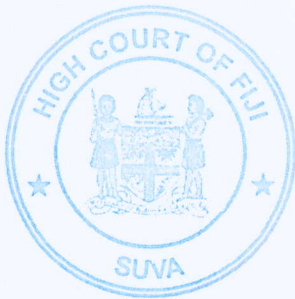
12. In summary, your sentences are as follows:

- | | | | | | |
|-------|-------------|---|---------------------|---|-----------------------|
| (i) | Count No. 1 | : | Aggravated Burglary | : | 3 years imprisonment |
| (ii) | Count No. 2 | : | Theft | : | 3 years imprisonment |
| (iii) | Count No. 3 | : | Rape | : | 17 years imprisonment |

13. Because of the totality principle of sentencing, I direct that the above sentences are made concurrent to each other, that is, a final total sentence of 17 years imprisonment.

14. Isei Korodrau, for offending against the complainant, I sentence you to 17 years imprisonment, with a non-parole period of 16 years imprisonment, effect forthwith.

15. The complaint's name is permanently suppressed to protect her privacy.




Salesi Temo
JUDGE

Solicitor for the State
Solicitor for the Accused

:
:

Office of the Director of Public Prosecution, Suva.
Legal Aid Commission, Suva.