

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 183 OF 2011

STATE

-v-

JOHN DOUGHTY

Counsels : **Mr. F. Lacanivalu for the State**
Ms. M. Tarai for the Accused

Date of Trial : **11 February 2014 to 17 February 2014**

Date of Sentence : **25 February 2014**

(Name of the victim is suppressed she is referred to as AD)

SENTENCE

1. The accused is before the Court for sentence, after being convicted of the following charge.

Statement of offence

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

Particulars of Offence

JOHN DOUGHTY on the 6th day of September, 2011 at Vunavutu in Sigatoka, in the Western Division had carnal knowledge with a woman namely **AD** without her consent.

2. You pleaded not guilty to above charge. Following trial lasting five days in this Court, you were found guilty on above count against you.

3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial, the Court decided to concur with the verdict of the assessors and found you guilty of the above charge and convicted you.
4. The following facts were proven in evidence during the trial. The 22 year old victim AD was living at the house of her aunt. You are distant cousin of the victim. You had come from Suva to this house on the day of the incident. You had planned to put Fijian medicine 'Ohe' to drinks. When victim pass out after drinking beer, you volunteered to take her home. Thereafter you had dragged her into a bush and raped her.
5. You had no remorse for your above conduct.
6. According to the Crimes Decree the maximum punishment for rape is Imprisonment for life. It is a serious offence. The tariff for rape is well settled since the Judgment of Hon. Mr. Justice A.H.C.T. Gates in **State v Marawa** [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
7. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed:

"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 that starting point."

8. Considering the above, I commence your sentence at 7 years imprisonment.
9. Aggravating factors;
 - (a) Victim is your distant cousin you breached the trust between cousins.
 - (b) You are not remorseful.
 - (c) This is a planned offence as you have used Fijian medicine 'Ohe' in drinks.
 - (d) The victim suffered injuries due to this incident.

Considering all, I increase your sentence by 4 years now the sentence is 11 years

imprisonment.

10. You are not a first offender. You have 6 previous convictions and three of them are in the operational period. You were convicted for Rape in 1999 and were sentenced for 5 years imprisonment.

11. Mitigating circumstances:

(a) Family depending on you and you are father of three children and your wife is pregnant.

Considering above, I reduce 1 year from your sentence now your sentence is 10 years imprisonment.

12. You were in remand for period of 2 years from 9.9.2011 to 11.9.2013 till you were granted bail by this Court. I deduct that 2 years from your sentence. Now your sentence is 8 years.

13. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 7 years as non parole period.

14. You are sentenced to 8 years imprisonment. You will not be eligible for parole until you complete serving 7 years of imprisonment.

15. Having considered the nature of the relationship you had with the victim, I order a permanent **Domestic Violence Restraining Order (DVRO)** in place, identifying victim AD as the protected person. You are hereby ordered not to have any contact with the victim directly or by any other means, unless otherwise directed by this Court.

16. 30 days to appeal to Court of Appeal.

Sudharshana De Silva
JUDGE

At Lautoka
25th February 2014

Solicitors : Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused