

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 178 of 2014

STATE

v.

SOKONAIA NAKULA

Counsel: Mr. M. Vosawale with Mr. S. Seruvatu for State
Ms. N. Mishra for Accused

Hearing: 29th, 30th March 2016

Summing Up: 31st March 2016

Judgment: 01st April 2016

Sentence: 12th April 2016

SENTENCE

1. Sokonaia Nakula, you stand convicted of one count of Rape and one count of Sexual Assault.
2. Brief facts of the case are that the complainant, her husband and their 3 small children were living in your house for about 6 months. On 15/05/14 the complainant's husband was away from home fishing out at sea. Your wife was also away in Lautoka. At about 1.00am you took the advantage of the situation and knowing that the complainant is helpless and cannot leave the children and go out of the house in the

night you entered into her room and forcefully kissed her and touched her breasts. The complainant was breast feeding her child. Then you dragged her into your room and removed her clothes and forcefully licked her vagina. You also inserted your fingers into her vagina. The following day itself the complainant reported the matter to the police.

3. The maximum punishment for rape of an adult is 7 – 15 years imprisonment. (**State v. Marawa**; *HAC 0016T.2003S (23 April 2004)*).

Aggravating factors

4. The aggravating factors are that you breached the trust reposed on you by the complainant and her husband. When they were sheltered by you in your house and when the complainant's husband was out at sea they obviously trusted you that you will look after their safety at home. Instead you took the advantage of the circumstances and the vulnerability of the complainant and raped her and sexually assaulted her.

Mitigating factors

5. I take into account all the mitigating factors submitted on behalf of you by your counsel. You are 55 years old. You have a 6 year old child and you are the sole breadwinner of the family. Although your mitigating submissions state that you have 3 children, it also says that you have grandchildren as well. Therefore it is not clear whether you are the breadwinner of all your children. However, I take into account that you have a 6 year old child.

6. You are not a first offender and therefore you are not entitled to any discount on previous good behaviour.
7. In the case of **Kasim v. State** (1994) FJCA 25; AAU 0021j.93S (27 May 1994) it was decided that the starting point for sentencing an adult in any rape case without aggravating or mitigating features, should be a term of imprisonment of 7 years.
8. In Mohammed Kasim's case court said:

"While it is undoubted that the gravity of rape cases will differ widely depending on all the circumstances, we think the time has come for this Court to give a clear guidance to the Courts in Fiji generally on this matter. We consider that in 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".

9. For the offence of Rape in Count No. 1 without taking into account the aggravating and mitigating factors I take 7 years as the starting point. I add 4 years for the aggravating factors and deduct 1 year for the mitigating factors. Now your sentence for Rape in Count No. 1 is 10 years imprisonment. I further deduct 3 months for your period in

remand. Finally you have to serve 9 years 9 months for the offence of Rape in Count No. 1.

10. The maximum punishment prescribed for Sexual Assault is 10 years imprisonment. The acts of Sexual Assault committed by you are touching complainant's breasts and licking her vagina.
11. The tariff for Sexual Assault is 2 – 8 years imprisonment. (**Abdul Kaiyum HAC 160 of 2010, State v. Epeli Ratabacaca Laca HAC 252 of 2011**).
12. The aggravating and mitigating factors are the same as above. I take 4 years as the starting point for the offence of Sexual Assault. I add 2 years for the aggravating factors and deduct 1 year for the mitigating factors.
13. Now your sentence for Sexual Assault in Count No. 2 is 5 years imprisonment.
14. Your final sentence is:

For Rape in Count 1 – 9 years and 9 months imprisonment.

For Sexual Assault in Count 2 – 5 years imprisonment.

Sentences of imprisonment in Counts No. 1 and 2 are to run concurrently. Your non-parole period will be 8 years of imprisonment.



A handwritten signature in blue ink, appearing to read "Priyantha Fernando".

Priyantha Fernando
Judge

At Suva

12th April 2016

Solicitors

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused.