

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 033 of 2013

STATE

v.

JOSEFA TUKANA

Counsel:

Ms. M. Khan for State
Ms. L. Raisua for Accused

Dates of Hearing: 18th April 2016
Date of Summing Up: 19th April 2016
Date of Judgment: 20th April 2016
Date of Sentence: 26th April 2016

SENTENCE

[Name of the victim is suppressed. The victim will be referred to as [S.R.]

1. Josefa Tukana you stand convicted of one count of Rape.

FIRST COUNT

Statement of Offence

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

Particulars of Offence

JOSEFA TUKANA on the 25th day of November 2012, at the University of the South Pacific, in Suva, in the Central Division, had carnal knowledge of '**S.R.**', without her consent.

2. The brief facts of the case are; you were employed as a Security Officer at USP. The complainant was 16 years old and she went to USP to meet her boyfriend who was a Solomon Islander. She was with her boyfriend in his room when you went and knocked at the door at around 9pm. You wanted the complainant to leave the room saying that the visting hours are over. You asked the complainant to follow you to the gate. Then you told her that you would show her the short cut to come to her boyfriend, took her to a vacant building and raped her. You were 44 years old at the time you committed the offence.
3. The maximum punishment for Rape is imprisonment for life. The tariff for rape of children (under 18) is 10 – 16 years of imprisonment. (**Anand Abhay Raj** (CAV003 of 2014).
4. In **State v. Marawa** (2004)FJHC 338; Hon Justice Gates (as he was then) stated;

“Rape is the most serious sexual offence. The courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and by meting out harsh sentences.”

Aggravating factors

5. You used your authority as a Security Officer to take the complainant out of her room. You breached the trust the complainant reposed on you. In that you told her to follow you to drop her at the gate and then diverted to a vacant building saying that you would show her a short cut and then you raped her.

Mitigating factors

6. I take into consideration that you are 46 years old and father of 5 children aged 17, 16, 10, 9 and 7 years.
7. I take 11 years as the starting point and add 3 years for the aggravating factors. I deduct 1 year for the mitigating factors. Now your interim sentence is 13 years.
8. You have four previous convictions as at today, which you have admitted. In terms of section 5 of the Sentencing and Penalties Decree 2009 in determining the character of the offender, court may take into consideration the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions recorded against the offender and the general reputation of the offender. Although the said four convictions were recorded after the commission of this offence, I find that you should not be entitled to a discount for your previous good character.

9. I further deduct 8 months for your period in remand for this case.
10. Now your final sentence is 12 years 4 months. Your non-parole period will be 10 years.



Priyantha Fernando
Judge

At Suva

26th April 2016

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for Accused.