

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC 92 OF 2016

BETWEEN : STATE

AND : APISALOME VIDOVI

Counsel : Ms. J. Fatiaki for State
Mrs. Latu for the Accused person

Date of Hearing : 25th of May 2016

Date of Sentence : 26th of May 2016

SENTENCE

1. You, Apisalome Vidovi, stand convicted for one count of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree, which carries a maximum penalty of life imprisonment and one count of Criminal Trespass contrary to Section 387 (4) of the Crimes Decree, which carries a maximum penalty of one year imprisonment period.
2. You pleaded guilty for these two counts on your own free will on the 25th of May 2016. Having satisfied that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you for these two counts as charged in the information.

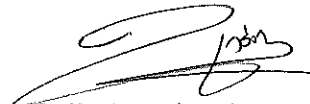
3. It was revealed in the summary of fact, which you admitted in open court that you entered into the house of the victim on the night of 5th of April 2016, while she was sleeping in the living room with her two children. Her husband was drinking cava with some others at the community hall of the village, which is located about 100 meters from the house. You and victim are related as she is your cousin. You then came to her and pretended as her husband, while she called out her husband's name. You then inserted your penis into her vagina. She then realised that you were not her husband and started to shout for help.
4. Rape is a crime that has no place of acceptance in the civilised society. It is a worse form of physical and psychological infringement of a person's life. It is not only an attack on oneself, but also an attack on acceptable values and norms of our society. The impact of such crimes, could adversely change the life of the victim and all of her family forever. The prevalence nature of the occurrence of such crimes, specially targeting females in domestic environment by known people has become a social menace in our society.
5. You entered into her house and committed this crime, while she was sleeping. She was not aware of your presence, and also you pretended that you were her husband, when she called her husband's name.
6. Having considered the Section 4(1) of the Sentencing and Penalties Decree and the serious nature of this offence, it is my opinion that the purpose of this sentence must be founded on the principle of deference and protection of the community. Offenders of this nature must be punished with severity in order to demonstrate that the court of law has no tolerance or sympathy for such offenders.

7. I select the offence of rape as the base offence for this sentence.
8. Tariff for the offence of rape ranges from 7 years to 15 years (State v Marawa[2004] FJHC 338; HAC 0016T.2003S (23 April 2004), The State v Navauniani Koroi (unreported) Cr. App Case No. HAA0050.2002S, The State v Samu Seru (unreported) Suva Crim. Case No. HAC0021.2002S, State v Oteti Sivonatoto, Crim Case No 207 of 2011)
9. Tariff for the offence of Criminal Trespass ranges from 1 month to 9 months. (Ravuwai v State [2007] FJAC 55). State v Nukumate [2011] FJHC 109; HAC184.2010 (4 February 2011))
10. There is no specific finding of any psychological and physical impact on the victim due to this incident. You have not inflicted any adverse form of violence on the victim. However, the court must give a real consideration to the overall circumstance of the incident and how it has harmfully affected the victim in order to consider the level of harm and culpability of this offending. I accordingly select 11 years of imprisonment as a starting point.
11. You have committed this offence while she was sleeping with her two children beside her. The subsequent commotion made the children awake. They shouted with fear. It appears that you found an opportunity while she was sleeping and her husband was away to carry out this crime. Hence, I find this is an opportunistic crime. By committing this crime you have undoubtedly breached the trust that the victim had for you as her cousin. I find these grounds as aggravating circumstances of this offence.

12. You are 25 years old. You are a young first offender. You pleaded guilty for this offence at the first available opportunity. By doing that you save the victim from the ordeal of having to relive the whole experience again in court. You are the sole bread winner of your family. You have spent nearly two months in remand custody prior to this sentence. I consider these factors as mitigating circumstances of this case.
13. Having considered the above discussed aggravating circumstances, I increase three years (3) to reach interim period of fourteen (14) years of imprisonment. I reduce two (2) years for the mitigating factors as discussed above. Your sentence now reaches to a period of 12 years imprisonment. I further reduce 4 years for the early plea of guilt that you entered at the first available opportunity to reach your final sentence as eight (8) years of imprisonment.
14. I sentence you for 6 months for the offence of Criminal Trespass.
15. Having considered your young age and previous good character, it is my opinion that the court must consider the possibilities of rehabilitation, while preserving the main sentencing purpose of deterrence and protection of community. I accordingly find five years of non-parole period would serve the both purposes of deference and rehabilitation.
16. Accordingly, I sentence you for a period of eight years (8) of imprisonment for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree and six (6) months of imprisonment for the offence of Criminal Trespass, contrary to Section 387(4) of the Crimes Decree. Both sentences to be served

concurrently. Furthermore, I order that you are not eligible for parole for a period of five (5) years.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.

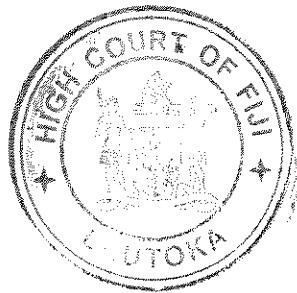


R. D. R. Thushara Rajasinghe

Judge

At Lautoka

26th of May 2016



**Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission**