

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION
CRIMINAL CASE NO: HAC 42 OF 2015

STATE

V

1. SOVITA SEVAKASIGA
2. PENIJAMINI TAWAKE

Counsels : Ms. A. Vavadakua for State
Ms. S. Dunn for 1st Accused
Mr. A. Paka for 2nd Accused

Hearings : 15 - 18 August, 2016

Summing Up : 19 August, 2016

Judgment : 19 August, 2016

Sentence : 19 August, 2016

SENTENCE

- [1] SOVITA SEVAKASIGA and PENJAMINI TAWAKE; after being convicted on two counts of Rape on each you, contrary to Section 207(1), (2)(a) and 2(c) of the Crimes Decree No. 44 of 2009, you are to be sentenced by this Court.
- [2] You pleaded not guilty to above charges. The ensuing trial lasted for 4 days in this Court; during which, the complainant and her cousin have given evidence for the prosecution while both of you offered evidence under oath and called a witness.

[3] At the conclusion of trial; having reviewed the evidence and its summing up to the assessors, this Court decided to accept their unanimous opinion and found you guilty and convicted you as charged.

[4] The following facts were proved during the trial:

(i) *The 25 year old complainant and others were drinking with two of you in the 1st accused's house till late evening. Then, you the 1st accused, having sent her to nearby shop, isolated her from the rest of the group, who returned to village.*

(ii) *Both of you chased after her when she tried to escape. The 1st accused caught her brought back to the house and then she was raped by both of you by taking turns. Both of you penetrated her vagina and mouth by penis.*

(iii) *She returned to her village and reported the matter to her cousin after two days.*

[5] According to Section 207(1) of the Crimes Decree No. 44 of 2009, the maximum punishment for Rape is imprisonment for life. It is a serious offence.

[6] The tariff for Rape of an adult is a term of imprisonment ranging from 7 years to 15 years as per **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; of 27 May 1994,.

[7] In the same judgement, the Court of Appeal observed thus:

"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."

[8] In determining the starting point within the said tariff, Goundar J, in **Koroivuki v The State** [2013] FJCA 15 has formulated the following guiding principles:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting

point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

[9] Considering the nature of offending, and in the light of the above guiding principles, I commence the sentence of each accused at 10 years of imprisonment for the each count of Rape.

[10] The aggravating factors are:

- a. Significant degree of opportunistic planning;*
- b. Taking advantage of the victim's vulnerability;*
- c. Display of total disregard to the victim's wellbeing;*
- d. The significant age gap between the complainant and the accused;*
- e. breach of trust;*
- f. continuing psychological trauma of the victim.*

[11] I add 3 years on the sentence of each accused on the above aggravating factors. Now your sentence is 13 years.

[12] The mitigating factors of the 1st accused are:

- (i) You are a first offender;*
- (ii) You are a 46 year old farmer who earns \$ 50 a week*
- (iii) You look after your sickly wife, sickly uncle and elderly mother.*

[13] I deduct 2 years for the above mitigating factors. Now the sentence of the 1st accused is 11 years.

[14] The mitigating factors of the 2nd accused are:

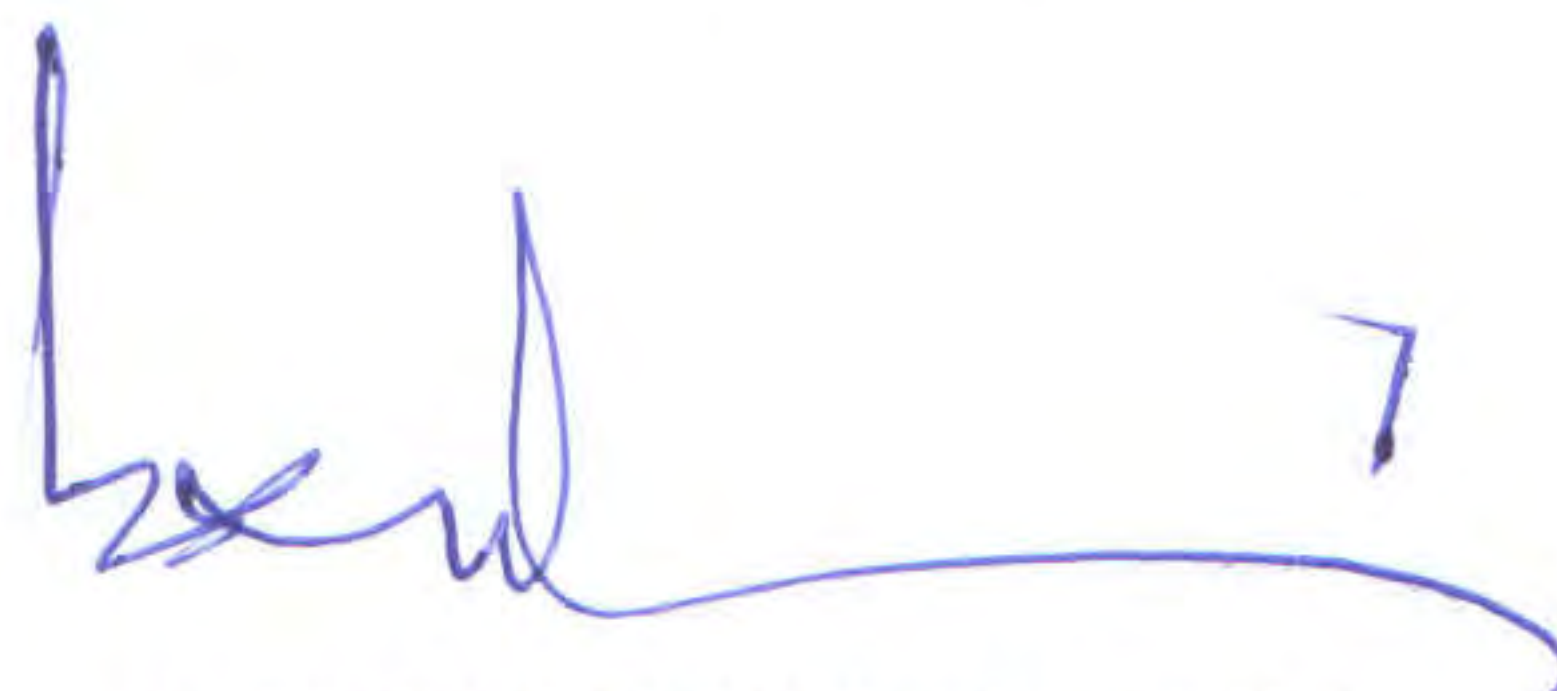
- (i) You are a first offender;*
- (ii) You are a 26 year farmer who earns \$ 100 per harvest;*
- (iii) You look after your elderly parents..*

- [15] I deduct 2 years for the above mitigating factors. Now the sentence of the 2nd accused is 11 years.
- [16] The two accused were in remand for this case for a period of one month and two weeks.
- [17] I deduct your six week long remand period from the sentence and now the head sentence is 10 years, 10 months and 02 weeks for each accused on each count of Rape. The two sentences of imprisonment imposed on each accused are to run concurrently.
- [18] Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 8 years 10 months and 02 weeks of non-parole period also on each accused.
- [19] Your final sentences are as follows:

1st accused : Head Sentence - 10 years, 10 months and 02 weeks
Non parole period - 8 years, 10 months and 02 weeks

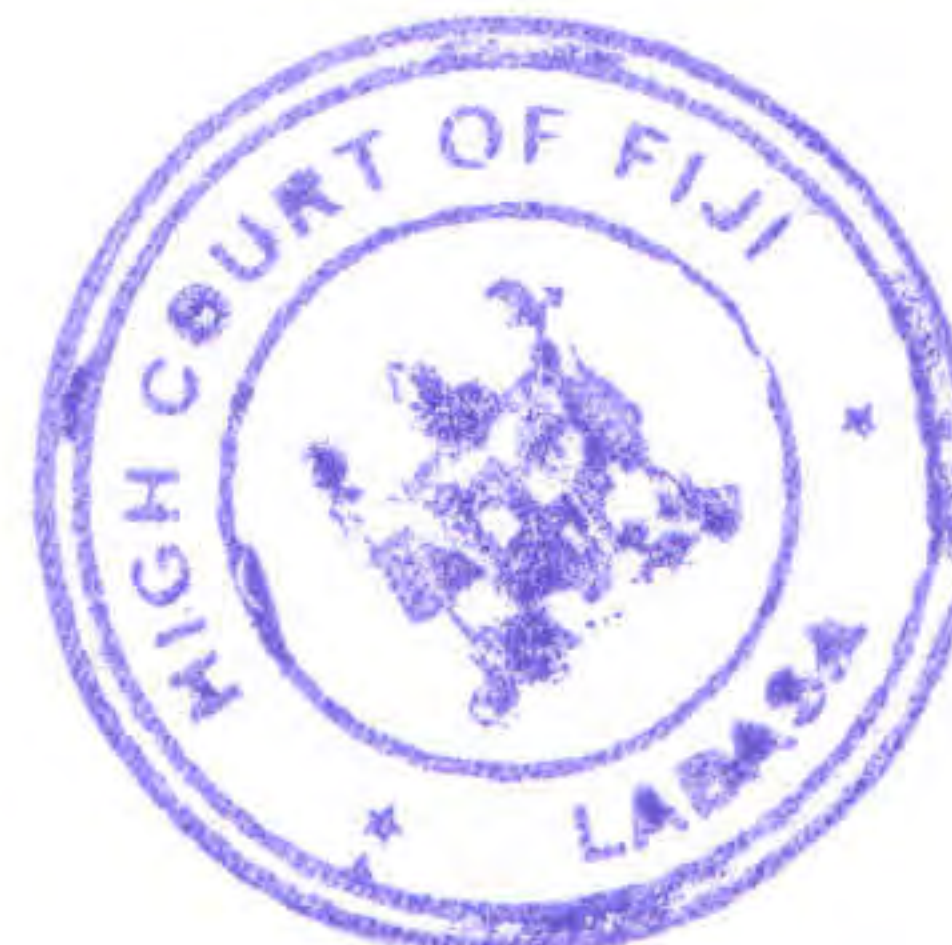
2nd accused : Head Sentence - 10 years, 10 months and 02 weeks
Non parole period - 8 years, 10 months and 02 weeks

- [20] You have 30 days to appeal to the Court of Appeal.



ACHALA WENGAPPULI

JUDGE



At Labasa

19 August, 2016

Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Office of the Legal Aid Commission, Labasa