

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 142 of 2013

STATE

V

ILIESA RAGIGIA

| | | |
|---------------------------|---|----------------------------------|
| Counsel | : | Mr. A. Singh for the State. |
| | : | Ms. L. Vateitei for the Accused. |
| Dates of Hearing | : | 19, 23, 25 May, 2017 |
| Closing Speeches | : | 29 May, 2017 |
| Date of Summing Up | : | 30 May, 2017 |
| Date of Judgment | : | 31 May, 2017 |
| Date of Sentence | : | 15 June, 2017 |

SENTENCE

[1] In a judgment delivered on 31 May, 2017, this court found the accused guilty and convicted him for two counts of rape as per the following information:

FIRST COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (c) of the Crimes Act 2009.

Particulars of Offence

ILIESA RAGIGIA on the 1st day of July, 2013, at **NADI** in the **WESTERN DIVISION**, used his penis to penetrate the mouth of **TEMALESI BULIVOU**, without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

Particulars of Offence

ILIESA RAGIGIA, on the 1st day of July, 2013 at **NADI** in the **WESTERN DIVISION**, used his penis to penetrate the vagina of **TEMALESI BULIVOU**, without her consent.

[2] The brief facts were as follows:

The complainant was a tenant of the accused living next door to the house of the accused. The complainant was asked by the wife of the accused to look after her children in her absence. The complainant felt sorry for the children and was helping them.

[3] On 1st July, 2013 at about 1pm after hanging the accused children's clothes to dry the complainant saw the accused standing near his bathroom wearing a blue and white stripe towel without a t-shirt.

[4] The accused pulled the complainant into the bathroom, she begged the accused by saying in the Itaukei language "tau kerekere" meaning for the accused to stop what he was doing.

[5] In the bathroom the accused opened his towel and forced his penis into the complainant's mouth for 10 minutes. At this time the complainant was

struggling with the accused, crying and the accused was pushing her hands away.

- [6] The complainant did not shout because she was frightened and afraid that the accused would do something to her. Again the complainant begged the accused to stop after which the accused opened the bathroom door.
- [7] The accused after putting on his towel dragged the complainant to his bedroom by holding her hand tightly. There was no one around the complainant was crying and afraid but she did not shout since she was feeling weak.
- [8] In the bedroom the accused locked the door and told the complainant not to shout, the accused pulled the complainant towards him and then pushed her to the floor. The accused was trying to take out her top, the complainant was struggling to push the accused away but he kept on pulling her hand. The accused managed to pull her top up the complainant kept on crying begging him to stop. To cover her body the complainant sat on the floor with her legs crossed. The accused was able to remove the complainant's long pants and top.
- [9] The accused then forced himself on her when she struggled to push him away he held her tightly. The accused then forced his penis into the complainant's vagina for 30 minutes.
- [10] The complainant did not consent to what the accused had done to her. After this the accused stood up put on his towel and went away. The complainant ran outside the house crying, at her house she informed her cousin brother Pajilai Bale and thereafter the matter was reported to Police.
- [11] Both counsel have filed written submissions for which the court is grateful.

[12] Counsel for the accused presented the following personal details and mitigation on behalf of the accused:

- (a) The accused is a first offender;
- (b) He is self-employed and 54 years of age;
- (c) His level of education is up to Form 6;
- (d) He is married with six children the youngest one is 3 years of age and the eldest 18.

Counsel for the accused also submits that the accused has helped in the formation of two major community projects in Nadi namely:

- (a) The Standard Cement Korovuto Project; and
- (b) Maqalevu Project owned by the Beijing Restaurant.

In 2016 the accused donated 10 acres of his land to the Fiji Mission Seventh Day Adventist Church to build their church in Korovuto. Counsel further submits that the accused is the sole breadwinner of the family who provides for the needs of his wife and children. The children are very much attached to their father and a long custodial sentence will be detrimental to the family. The Counsel also relies on the five character references given on behalf of the accused. All the references provided speak highly of the accused as a hardworking, dedicated, honest and a person of good character.

[13] I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs the State, CAV 0003 of 2014* that the personal circumstances and family background of an accused person has little mitigatory value in cases of sexual nature.

The aggravating features are:

(a) Breach of Trust

The victim was a tenant on the accused property who trusted and respected him like her father and the victim was assisting his children by attending to household chores in the absence of his wife. The accused by his actions has committed a serious breach of trust.

[14] The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences.

[15] In *Mohammed Kasim v The State* (unreported) Cr. Case No. 14 of 1993; 27 May 1994, the Court of Appeal had stated:

“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 the starting point.”

[16] Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect

impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

- [17] I am satisfied that the two offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.
- [18] It is the duty of the court to protect women from sexual violations of any kind that is the reason why the law makers have imposed life imprisonment for the offence of rape as the maximum penalty.
- [19] Bearing in mind the seriousness of the offences committed I take 9 years imprisonment as the starting point of your aggregate sentence. I add 2 years for the aggravating factor, bringing an interim total of 11 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I find your good character has substantive mitigating value. I therefore reduce the sentence by 2 years.
- [20] I note the accused has been in remand for about 1 month and 18 days. I exercise my discretion to further reduce the sentence for the remand period by 2 months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served.

[22] Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.

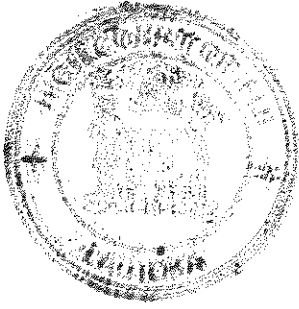
[23] Under section 18 (1) of the Sentencing and Penalties Act, I impose 7 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.


[24] Mr. Ragigia you have committed an abhorrent crime against a victim who trusted you. In this case the victim was doing a good deed to your family in particular to your children by attending to household chores in the absence of your wife. I am sure it will be difficult for the complainant to forget what you had done to her. Your actions towards the victim were deplorable and selfish. This court will be failing in its duty if a deterrent custodial sentence was not imposed.

[25] I am satisfied that the term of 8 years and 10 months imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each offence.

[26] In summary I pass an aggregate sentence of 8 years and 10 months imprisonment for the two offences of rape that the accused have been convicted of with a non-parole period of 7 years to be served before the accused is eligible for parole.

[27] 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka
15 June, 2017

Solicitors

Office of the Director of Public Prosecutions for the State.

M/s. Asta's Law, Nadi for the Accused.