

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 69 of 2014

STATE

V

MACIU LIBU

Counsel : Ms. R. Uce for the State.
: Ms. V. Narara (as duty solicitor) for the Accused.

Dates of Hearing : 4, 5 September, 2017
Closing Speeches : 6 September, 2017
Date of Summing Up : 6 September, 2017
Date of Judgment : 8 September, 2017
Date of Sentence : 22 September, 2017

SENTENCE

[1] In a Judgment delivered on 8 September, 2017 this court found the accused guilty and convicted him for one count of rape as per the following amended information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

MACIU LIBU on the 3rd of May, 2014 at Lautoka in the Western Division, had carnal knowledge of **SEINI BATIUVI**, without her consent.

- [2] The brief facts were as follows:
On 3rd May, 2014 between 7.30pm and 8pm the complainant Seini Batiuvi whilst walking towards the Value City Shop in the heart of Lautoka City and as she was about to go past the corner of this shop she was grabbed and pulled to the side of the Value City Shop into a dark passage.
- [3] When the complainant was pulled inside the passage she heard the accused say in the Itaukei Language “you are my wife” when the complainant replied that she was not his wife she received a punch on her stomach. As she sat down on the ground she received two more punches on the lower part of her stomach. After this the accused undressed her by taking off her clothes. At this time the complainant was lying on the ground.
- [4] The accused removed his t-shirt pulled his trousers down to his knees and came on top of the complainant and inserted his penis into her vagina for around 10 minutes.
- [5] The witness was able to see the accused who had dreadlocks hair, in his hand he had a shoe shine brush and a box used for shoe shining. The accused was wearing a black t-shirt, black long trousers, a cap and was of dark complexion a bit tall but not a very big person.
- [6] When the accused came on top of her she could see his face at this time she saw a security officer about 6 meters away to whom she called out. The security officer looked towards her. At this time the accused left her.
- [7] The witness ran towards the security officer by taking her clothes with her seeking help. When she reached the security officer she wore her clothes and informed the security officer of what had happened to her by this time the accused had left the scene.
- [8] When her clothes were being removed the witness did not do anything because she was weak and her stomach was paining and she could not also

move herself because the accused had locked both her legs using his legs. The witness did not scream because of pain in the stomach and she was experiencing shortness of breath so her voice was not loud enough.

[9] The matter was reported to the Police thereafter she was medically examined at the Hospital.

[10] The following personal details and mitigation are applicable:

- (a) The accused was 34 years of age at the time of the offending;
- (b) Single and unemployed;
- (c) Sole breadwinner of his family and lives with his father;
- (d) Although the accused is not a first offender, however, his last previous conviction is dated 16/11/2011 and the active previous convictions are not sexual offences. He has kept out of trouble for the last 6 years.

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

[12] The aggravating features are:

(a) Use of violence

The accused punched the victim on her stomach three times which made her weak causing acute injuries. As a result the complainant had shortness of breath and was unable to scream out for help.

(b) Advantage of complainant being alone

The accused took advantage of the complainant who was alone and vulnerable in a secluded area.

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

accepted tariff for the rape of an adult is a term of imprisonment between 7 years and 15 years. In *Mohammed Kasim v The State, Criminal Appeal No. 21 of 1993; (27 May 1994)*, the Court of Appeal had stated:

“...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 the starting point.”

- [14] After assessing the objective seriousness of the offence committed I take 8 years imprisonment as the starting point of your sentence. I add 3 years for the aggravating factors, bringing an interim imprisonment of 11 years. Although the personal circumstances and family background of the accused has little mitigatory value, however, I allow discount to the accused for keeping out of trouble for the past 6 years. I therefore reduce the sentence by 1 year for mitigating factors.
- [15] I note that the accused has been in remand for about 6 months and 2 weeks I further reduce the sentence in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence is 9 years, 5 months and 2 weeks imprisonment.
- [16] Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim compels me to state that the purpose of this sentence is to punish offenders to an extent and in

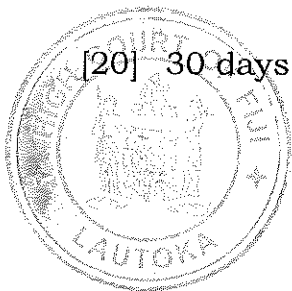
a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.

[17] Under section 18 (1) of the Sentencing and Penalties Act, I impose 7 years and 6 months 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.

[18] Mr. Libu you have committed an abhorrent crime on an unsuspecting victim, you took advantage of the fact that she was alone in a spot where no one would be around to assist her. The use of violence on a defenseless victim is disgusting and cowardly. It is the duty of the court to protect the vulnerable and more so to protect women from sexual violations of any kind. I note from the victim impact assessment report that the complainant after this incident did not complete her studies she was very disturbed by the incident is scared to be alone and is unable to sleep at nights.

[19] In summary the accused is sentenced to 9 years, 5 months and 2 weeks imprisonment with a non-parole period of 7 years and 6 months to be served before the accused is eligible for parole.

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



At Lautoka

22 September, 2017

A handwritten signature in black ink, appearing to read 'Sunil Sharma', is written above the printed name and title.

Sunil Sharma
Judge

Solicitors

Office of the Director Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.