

**IN THE HIGH COURT OF FIJI AT LABASA**

**CASE NO: HAC 61 of 2017  
[CRIMINAL JURISDICTION]**

**STATE**

**V**

**ABDUL RASHID**

**Counsel** : Ms. D. Kumar for State  
Mr. V. Tuicolo for Accused

**Date of Hearing** : 20 March 2018

**Date of Sentence** : 21 March 2018

**SENTENCE**

1. Abdul Rashid, you were charged by the Director of Public Prosecutions for the following offences;

**FIRST COUNT**

*Statement of Offence*

**BREACHING A DOMESTIC VIOLENCE RESTRAINING ORDER:**

Contrary to section 77 (1) of the Domestic Violence Act 2009.

*Particulars of Offence*

**ABDUL RASHID**, between the 22<sup>nd</sup> day of September 2017 and the 24<sup>th</sup> day of September 2017 at Labasa in the Northern Division, without reasonable excuse, contravened a domestic violence restraining order or part of that order, which he had notice and to which he was bound.



SECOND COUNT  
*Statement of Offence*

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

*Particulars of Offence*

**ABDUL RASHID**, on the 24<sup>th</sup> day of September 2017 at Labasa in the Northern Division, penetrated the anus of **ROSINA KHATUN BI** with his penis without her consent.

2. You pleaded not guilty to the above charges on 17<sup>th</sup> January 2018. On 16<sup>th</sup> March 2018 you indicated to court that you wish to plead guilty to the charges. When your plea was taken on 20<sup>th</sup> March 2018, you pleaded guilty to both counts and you admitted to the summary of facts filed by the prosecution which states *inter alia*;

3. *The complainant and the accused person are married and have a daughter named Rashida Khatun Bi.*

COUNT 1:

5. *On 3 September 2017, the complainant and the accused person had a dispute in which Abdul Rashid punched the complainant. Due to the assault, the complainant sought a DVRO at the Labasa magistrates' Court.*

6. *The interim DVRO case no. 447/17 was issued by the Labasa Magistrates' Court on 12 September 2017. The respondent was the accused person. The interim DVRO was served on the complainant and the accused person by police. The accused person signed on the copy of the interim DVRO to confirm service.*

7. *The interim DVRO imposed standard non-molestation conditions pursuant to section 27 of the Domestic Violence Act 2009 which included that the respondent [Abdul Rashid] must not threaten, intimidate or harass the protected person.*

8. *On 22 September 2017, the accused person, without lawful excuse, contravened the interim DVRO by threatening the complainant to withdraw her complaint or else he will chop her, hang their daughter and hang himself or surrender to the police.*



9. *The accused person would wake the complainant in the early hours at about 3 or 4am and ask her to withdraw her complaint.*

## COUNT 2

10. *On 24 September 2017, the accused person and the complainant were at their home at Emily Road, Siberia, with their daughter, Rashida Khatun Bi. The complainant and the accused slept on one bed while their daughter slept on another bed in the same room.*

11. *In the hourly hours, at about 4.30am, the accused woke up. The complainant was also awake but still in bed. She was lying on her stomach.*

12. *The accused person, without the complainant's consent, pulled down her pants and undergarment and inserted his penis in her anus.*

13. *The complainant told the accused that it was painful but he did not get off her. She cried, yelled and turned sideways, and then the accused person got off her. The complainant got dressed and prepared breakfast.*

14. *On 25 September 2017, the complainant reported the matter to police at the Savusavu Police Station.*

15. *On 29 September 2017, at Savusavu Hospital, the complainant was medically examined by Dr Katarina, who then rendered a medical report.*

16. *As per the specific findings, minimal rectal prolapse was noted. The Doctor's professional opinion was that due to forceful penetration, the patient developed a rectal prolapse.*

3. Being satisfied that your plea of guilty on each count is voluntary and unequivocal you were convicted by this court of the two offences as charged.

4. Given the fact that your plea was first taken on 17<sup>th</sup> January 2018 though you have pleaded not guilty to the two counts on that date and the fact that you have informed this court within 2 months thereafter that you want to plead guilty, your plea of guilty in respect of each count shall be regarded as early guilty pleas. You will be given a 30% deduction of your sentence accordingly.



5. The maximum penalty in terms of section 77(1) of the Domestic Violence Act 2009 is a fine of \$1,000 and a term of imprisonment of 12 months.
6. In relation to the first count the prosecution relies on the fact that you threatened the victim who is your wife to withdraw her complaint against you in the magistrate court when there was a domestic violence restraining order ("DVRO") in force which prohibited you from threatening, intimidating or harassing the victim. Given the relevant facts, you have breached the restraining order imposed against you in order to threaten the complainant to withdraw the case in which the said restraining order was issued. This is a very serious factor that aggravates your offending on count one. In my view, the fact that you did not have any previous convictions cannot be considered as a mitigating factor in view of this offence as you have committed an act which you have been clearly warned not to commit. There are no mitigating factors in respect of the first count.
7. Considering all the circumstances relevant to your offending in relation to the first count, I find that the appropriate sentence should be an imprisonment term of 10 months. In view of your early guilty plea you will receive a discount of 03 months. Accordingly, you are sentenced to an imprisonment term of 07 months for the first count.
8. The maximum penalty for the offence of rape in terms of section 207 of the Crimes Act 2009 is imprisonment for life. It is settled that the sentencing tariff for rape of an adult victim is a term of imprisonment between 7 years and 15 years. (*State v Naicker* [2015] FJHC 537; HAC279.2013)
9. I consider the following as aggravating factors;
  - a) There is a clear breach of trust you being the victim's husband;
  - b) You committed the offence against the victim who is the protected person of the DVRO issued against you;



- c) According to the medical report your act had caused a medical condition to develop in the victim's rectum; and
  - d) You have committed the offence while your daughter was in the same room though she was said to be sleeping.
10. According to the relevant DVRO you have been warned not to '*physically assault or sexually abuse the protected person*'. The fact that you committed the offence of rape while there was a DVRO against you was not considered in relation to the first count either to support the elements of the offence or as an aggravating factor in sentencing. Therefore, this factor is considered as an aggravating factor in relation to the second count. In considering this as an aggravating factor, I would not give much weight to the contempt you have displayed towards the court by your conduct. I am deeply concerned about the impact on the complainant and on the society in general when you committed this offence even after being clearly warned by a court of law to refrain from committing such offences. Your conduct if not adequately denounced would shatter the confidence the society, including your wife would reasonably be expected to have on the rule of law.
11. I consider the following as your mitigating factors;
- a) You are a first offender; and
  - b) You are remorseful.
12. It should be noted that the fact that you committed this offence when you had been warned by a court of law not to sexually abuse the victim will reduce the weight I may have given in view of the fact that you have no previous convictions in other circumstances.
13. Your counsel submitted the following as your personal circumstances during the hearing on mitigation *inter alia*;
- a) you are 30 years old; and
  - b) you were supporting your elderly mother.

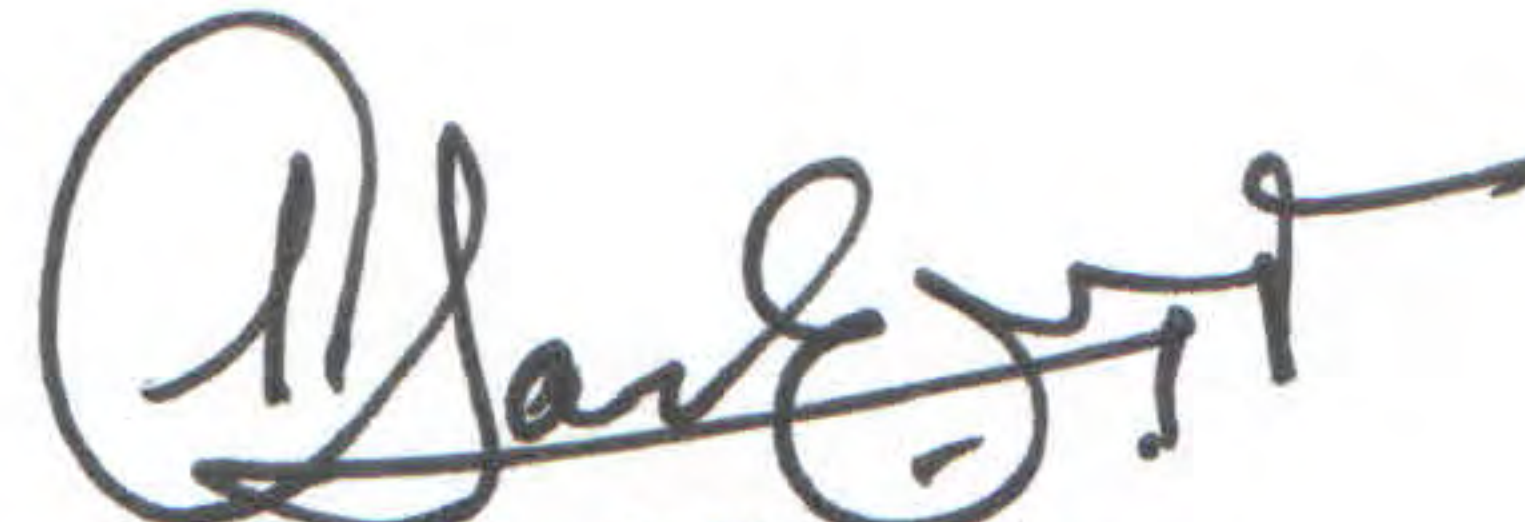


14. I take 7 years imprisonment as the starting point of your sentence for the second count. Considering the aforementioned aggravating factors, I add 10 years. Now your sentence is 17 years imprisonment.
15. I deduct 02 years of your sentence considering the above mitigating factors. Now your sentence is 15 years imprisonment.
16. In view of your early guilty plea further 04 years and 06 months will be deducted from your sentence.
17. I hereby sentence you for an imprisonment term of 10 years and 06 months for the second count.
18. You should serve the two sentences concurrently.
19. Accordingly your final sentence is an imprisonment term of 10 years and 06 months. I order that you are not eligible to be released on parole until you serve 08 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
20. It was submitted that you were arrested for this matter on 26<sup>th</sup> September 2017 and you were in custody in view of this matter since then. Accordingly, you have spent nearly 06 months in custody. The period you were in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and the Penalties Act. I hold that the period to be considered as served should be 06 months.
21. In the result, you are sentenced to an imprisonment term of 10 years and 06 months with a non-parole period of 08 years. Considering the time spent in custody, the time remaining to be served is as follows;
  - Head Sentence - 10 years
  - Non-parole period - 07 years and 06 months



22. 30 days to appeal to the Court of Appeal.



  
Vinsent S. Perera  
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the Accused