

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 30 of 2017

STATE

V

TAITUSI MANUCA
1st Accused

JONE COLATA
2nd Accused

Counsels: Mrs. A. Vavadakua for the State
Mr J. Korotini (L.A.C.) for the 1st Accused
Ms. K. Boseiwaqa (L.A.C.) for the 2nd Accused

Date of Trial: 30, 31, July, 01 August 2018

Date of Sentence: 03 August 2018

SENTENCE

1. After trial in this Court the first accused has been convicted of one count of rape and one count of sexual assault and the second accused has been convicted of 2 counts of rape.
2. The offences arose out of a night of heavy drinking on the garden island of Taveuni. The two accused met a Mr. and Mrs. B on one of the island beaches at about 7pm on the 7th July 2017. Mr. and Mrs. B were recent arrivals on the island from

New Zealand. The four drank together in a number of locations until at about 3am when they arrived at a pier known locally as Korean Wharf where they listened to music and the beers having run out, they shared a bottle of rum.

3. After about an hour Mrs. B felt exhausted and sat in the passenger seat of their vehicle with the door open. She fell asleep but awoke to find the 1st accused on top of her penetrating her while the 2nd accused stood outside egging him on. The 1st accused raped her and committed other sexual acts on her until he was finished. At that stage they changed places and the second accused raped Mrs. B with both his finger and penis.
4. While this was happening Mr. B was nowhere to be seen or heard. He returned subsequently in a dazed and confused State. Without realizing what had happened, he drove the 2 accused to the township and dropped them off. It was only then that his wife told him of her ordeal.
5. On medical examination a few hours later Mr. B. was found to have a fresh bloody injury on his head which the Doctor said would have been inflicted within the previous 12 hours and which was consistent with a blow by a blunt object.
6. Circumstantial evidence suggests that he may have been incapacitated to allow free access to Mrs. B, but they are not charged with that and it cannot be used to their prejudice in sentence.
7. The first accused is 26 years old and until arrest worked as a yaqona farmer on the island. He is married with a very young

daughter. He submits that he still had nothing to do with these crimes which shows a distinct lack of remorse.

8. He has one previous conviction for theft in March 2017 for which he received a suspended sentence. It was while serving that sentence that he committed these crimes. He is also facing a charge in the Magistrates Court at Labasa for a crime committed while on bail for this case.
9. The second accused is 35, married with two children. His wife is the family breadwinner and he stays home and looks after the children and his wife's parents. He was also farming on Taveuni. His wife and baby daughter both have medical problems for which they have to make quarterly visits to Suva.
10. The 2nd accused has never offended in the last 10 years and he will receive credit for that.
11. Both accused served 4 months in custody before they were granted bail in this case.
12. The maximum sentence for rape is life imprisonment and ever since 1994 (***Kasim*** AAU21/93) the starting point of a rape of an adult is 7 years imprisonment.
13. There are however in this case a number of aggravating features.
14. First the two accused took advantage of a woman who had been drinking to excess. A woman who has been drinking all night with men is not necessarily holding out the promise of sexual activity. The fact that she might be drunk increases the

likelihood that she may not be in a position to give consent or not which increases the probability of recklessness in the element of consent.

15. Mr. and Mrs. B had been extremely hospitable to both accused all night supplying them with drinks and cigarettes and carrying them about in their vehicle. The men did not spend one cent towards the purchases of liquor and then to repay the couple with such abuse to Mrs. B. is appalling.
16. The sexual attack took place late at night when no one else was around a factor that would certainly have added to the stress felt by Mrs. B.
17. Mr. and Mrs. B were newcomers to the island and to Fijian culture and society and to assail the dignity of Mrs. B by these crimes would have a profound effect on how they would view their newly adopted community in the years to come.
18. For the offence of rape I take a starting point of 8 years. For the atrocious aggravating features referred to above I add a further six years to the starting point bringing the interim total to 14 years imprisonment.

First Accused

19. The first accused has nothing to assist him by way of mitigation. He has no respect for authority by offending while on a suspended sentence and re-offending while on bail for this case.

20. For the time he has spent already on remand I deduct 4 months for the sentence, meaning he will serve a sentence of 13 years and 8 months for rape.
21. For the offence of sexual assault where there has been contact between the naked genitalia of the victim and the mouth of the accused, I sentence the accused to a term of imprisonment of 7 years (following **Abdul Kaiyum** HAC 160/10). This term will be served concurrently with the term for rape. He is to serve a total term of 10 years before he is eligible for parole.

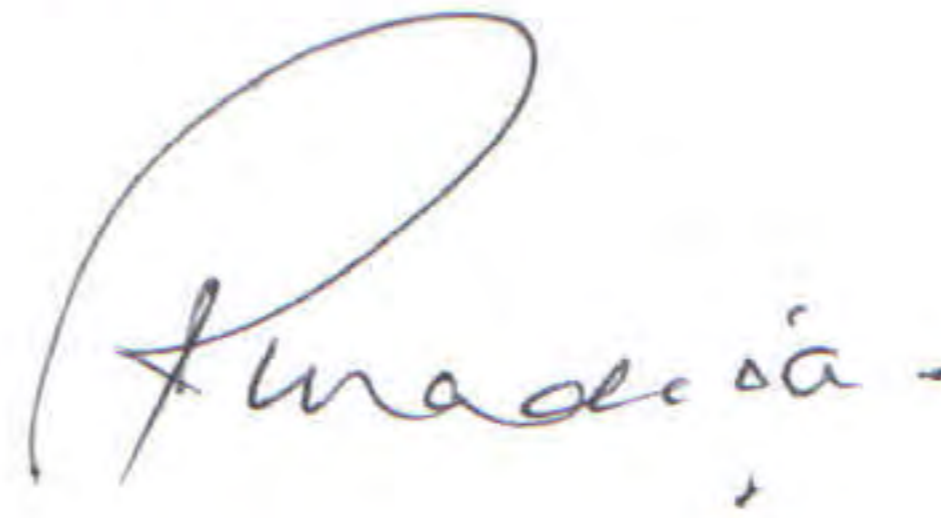
Second Accused

22. The second accused has the advantage of good behaviour for the last 10 years and he too has spent 4 months in custody awaiting trial. For that good behaviour and remand period I deduct 18 months which means that for each of the two rapes he has been convicted of he will serve a sentence 12 years and 6 months imprisonment. Both terms will be served concurrently. He is to serve a term of 9 years before he is eligible for parole.

Summary

23. Count One (Rape – first accused) 13years 8 months.
Count 2 (Sexual Assault – first accused) 7 years, concurrent.
Total for first accused 13 years 8 months with a minimum term of 10 years imprisonment.
24. Count three (Rape -second accused) 12 years 6 months.
Count Four (Rape – second accused) 12 years 6 months, concurrent.

Total for second accused 12 years 6 months with a minimum term of 9 years.



P. K. Madigan

Judge

At Labasa

03 August 2018

