

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 338 OF 2017S

STATE

Vs

NIKO ROKARA LEVULA

Counsels : Ms. L. Bogitini for State
Accused in Person [Tried in absentia, as he escaped from custody this morning].

Hearings : 11 to 14 February, 2019

Summing Up : 18 February, 2019

Judgment : 18 February, 2019

Sentence : 19 February, 2019.

SENTENCE

1. In a judgment delivered yesterday, the court found you guilty and convicted you on the following counts in the following information:

First Count

Statement of Offence

BURGLARY: *Contrary to section 312 (1) of the Crimes Act of 2009*

Particulars of Offence

NIKO ROKARA LEVULA on the 5th day of November, 2017, at Nasinu in the Central Division, broke into the property of KG with intention to commit theft.

Second Count

Statement of Offence

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

Particulars of Offence

NIKO ROKARA LEVULA on the 5th day of November, 2017, at Nasinu in the Central Division, penetrated the vagina of KG, with his penis, without her consent.

Fourth Count

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311 (1) (b) of the Crime Act of 2009.

Particulars of Offence

NIKO ROKARA LEVULA on the 5th day of November, 2017, at Nasinu in the Central Division, being armed with an offensive weapon, namely a knife, stole 1 X handbag brown in colour valued at \$15.00, 1 x dark blue BLU brand mobile phone valued at \$50.00, 1 x brown Roxy brand purse valued at \$30.00, cash amounting to \$100.00 and coins amounting to \$5.00, all to the total value of \$200.00, the property of KG.

2. The brief facts of the case were as follows. The complainant (PW1) was 39 years old. She resided with her 3 young children and 2 nieces in Nasinu. She works in Suva. The accused was 26 years old. He was unemployed and resided in a village in Naitasiri. When he comes to Suva, he resided with his uncle, whose house is near to the complainant. It appeared the accused had been observing the complainant for a while. On 4 November 2017, a Saturday, the complainant went out with friends to a nightclub. Liquor was consumed. Later, she went with friends to Nabua, and further consumed liquor. At 3 am on 5 November 2017, a Sunday, she returned home in a taxi.
3. She went into her mother's bedroom and slept. She was alone in the same. At about 5.00 am in the early morning, she was awoken by the accused. The accused had covered his face with a piece of cloth. The accused had a knife in his hand. The accused later stabbed the complainant in the lip and chin and proceeded to forcefully take off the complainant's clothes. He later raped her. Then he stole the complainant's properties as itemized in count no. 4. Thereafter he fled the crime scene. The accused had been tried and convicted by the High Court of the information mentioned above.
4. We will first discuss the serious offence of "rape", then "aggravated robbery", and lastly, "burglary". Rape, as an offence, is very serious. It carried a maximum sentence of life

imprisonment (see section 207(1) of the Crimes Act 2009). This meant that the people of Fiji, through their representatives in Parliament, view the offence of rape as a serious matter and had prescribed the maximum sentence of life imprisonment for it. Rape is a serious invasion of a person's dignity and privacy. It demeans people. It is the ultimate show of disrespect to a person. Thus, the courts had prescribed a tariff of 7 to 15 years imprisonment for the rape of an adult: see **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; **Bera Yalimawai v The State**, Criminal Appeal no. AAU 0033 of 2003, Fiji Court of Appeal and **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal. The actual sentence will depend on the mitigating and aggravating factors.

5. "Aggravated Robbery", as a criminal offence, is viewed seriously by the law-makers of this country, and it carried a maximum sentence of 20 years imprisonment. For a spate of robberies, the tariff is a sentence between 10 to 16 years imprisonment: see **Livai Nawalu v The State**, Criminal Appeal No. CAV 0012 of 2012, Supreme Court of Fiji. With a single case of aggravated robbery, the tariff is now a sentence between 8 to 16 years imprisonment: see **Wallace Wise v The State**, Criminal Appeal No. CAV 0004 of 2015, Supreme Court of Fiji. The actual sentence will depend on the aggravating and mitigating factors.
6. In **Wallace Wise v The State** (supra), the Hon. Chief Justice A Gates said as follows:

"... it is our duty to make clear these type of offences will be severely disapproved by the courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilized and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders..."

7. Furthermore, the Hon. Chief Justice, in the above case, commented as follows:

"...Sentences will be enhanced where additional aggravating factors are also present, examples would be:

- (i) *Offence committed during a home invasion.*
- (ii) *In the middle of the night when victims might be at home asleep.*
- (iii) *Carried out with premeditation, or some planning.*
- (iv) *Committed with frightening circumstances, such as the smashing of windows, damage to the house or property, or the robbers being masked.*
- (v) *The weapons in their possession were used and inflicted injuries to the occupants or anyone else in their way.*

- (vi) *Injuries were caused which required hospital treatment, stitching and the like, or which come close to being serious as here where the knife entered the skin very close to the eyes.*
- (vii) *The victims frightened were elderly or vulnerable persons such as small children..."*

8. "Burglary", contrary to section 312 (1) of the Crimes Act 2009, carried a maximum sentence of 13 years imprisonment. Recently, the tariff had been increased from 20 months to 6 years imprisonment: see **State v Shavneel Prasad**, Criminal Case No. HAC 254 of 2016, High Court, Suva and **State v Jone Vonu and Others**, Criminal Case No. HAC 148 of 2017, High Court, Suva. However, the final sentence will depend on the aggravating factors and mitigating factors.
9. The aggravating factors, in this case, were as follows:
- (i) The three offences committed in this case was done in the course of a home invasion. People's homes are their castle and must be treated with respect. The complainant, her three children and two nieces, were fast asleep in their home, early morning on 5 November 2017. You saw it fit to burgle their house, enter the same without their permission, stabbed and raped the complainant, and if that was not enough, you violently stole her properties, as alleged in count no. 4. You must realize that you will have to be punished to atone for your crimes. You therefore should not complain when a long prison sentence is given to you.
 - (ii) Your offendings were obviously pre-planned. You were a neighbour of the complainant for many years. It was obvious that you had been planning these crimes for a while, while observing the family from your uncle's home. You lived in a village in Naitasiri, but every now and then you visit and stayed with your uncle, who was a close neighbour of the complainant.
 - (iii) Your offendings were carried out in frightening circumstances. Your home invasion was done at night when the whole family was asleep at 5 am early Sunday morning on 5 November 2017. You removed 3 louvers from a bedroom window and climbed into the home. You had your face covered with a piece of cloth. You then armed yourself with a kitchen knife. Then you offended against the complainant.
 - (iv) You took a knife from the complainant's kitchen. Then you used the same to stab the complainant in the lip and chin, when she confronted you. Her injuries are shown in her medical report submitted to court.

- (v) You attacked a female complainant. She was vulnerable at the time. She was in the house with her three young children and two nieces.
- (vi) By offending against the complainant, you showed no regard to her right as a human being, her right to personal safety and her right to a happy and peaceful life.

10. The mitigating factors were as follows:

- (i) At the age of 28 years, this was your first offending;
- (ii) You had been remanded in custody, awaiting trial, since 9 November 2017, which is 1 year 3 months 10 days ago.

11. On count no. 2 (rape), I start with a sentence of 12 years imprisonment. I add 5 years for the aggravating factors, making a total of 17 years imprisonment. I deduct 1 year 4 months, for time already served while remanded in custody, leaving a balance of 15 years 8 months imprisonment. I deduct another 8 months for being a first offender, leaving a balance of 15 years imprisonment. On count no. 2 (rape), I sentence you to 15 years imprisonment.

12. On count no. 4 (aggravated robbery), I start with a sentence of 12 years imprisonment. I add 5 years for the aggravating factors, making a total of 17 years imprisonment. I deduct 1 year 4 months, for time already served while remanded in custody, leaving a balance of 15 years 8 months imprisonment. I deduct another 8 months for being a first offender, leaving a balance of 15 years imprisonment. On count no. 4 (aggravated robbery), I sentence you to 15 years imprisonment.

13. On count no. 1 (burglary), I sentence you to 4 years imprisonment.

14. The summary of your sentences are as follows:

- (i) Count No. 1 : Burglary : 4 years imprisonment
- (ii) Count No. 2 : Rape : 15 years imprisonment
- (iii) Count No. 4 : Aggravated Robbery : 15 years imprisonment

15. Mr. Niko Rokara Levula, what you did to the complainant was uncalled for. You are a fit looking young man, but you choose to use your strength in a negative and destructive way. As a neighbour of the complainant and her family, you knew that there would be no opposition to you when you attacked the complainant's family that early morning on 5 November 2017 at 5

am. You were a bit drunk and that gave you "dutch courage". You broke into the complainant's house by removing 3 louvers from a window. You then proceeded to arm yourself with a kitchen knife. You had already covered your face and head with a piece of cloth.

16. You stabbed the complainant on the lip and chin when she resisted you. You then raped her. As a further insult to her, you robbed her of her properties, as itemized in count no. 4. What you did to this woman is the utmost concern of all women and girls in this country. I will therefore have to make an example of you. I direct that 5 years from the sentence in count no. 4 be made consecutive to the 15 year sentence in count no. 2, making a total sentence of 20 years imprisonment. The sentence in count no. 1, 2 and the 10 year balance in count no. 4, be made concurrent to each other, leaving a final total sentence of 20 years imprisonment.
17. Mr. Niko Rokara Levula, for committing burglary (count no.1), rape (count no.2) and aggravated robbery (count no.4) against the complainant, at Nasinu in the Central Division, on 5 November 2017, I sentence you to 20 years imprisonment, with a non-parole period of 19 years imprisonment. Before I read the sentence, I was told the accused had escaped from custody this morning. The above sentence will therefore commence from the date he is arrested by the police.
18. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances, to protect the community, to deter other would-be offenders and to signify that the court and the community denounce what you did to the complainant on 5 November 2017, at Nasinu in the Central Division.
19. The complainant's name is permanently suppressed to protect her privacy.
20. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for Accused : **Accused in Person.**