

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 94 of 2014

BETWEEN : STATE

AND : ALIPATE LUMELUME

Counsel : Ms Uce for the State
Ms Bilivalu for the Accused

Dates of Hearing : 02 & 03 October 2019

Closing Speeches : 03 October 2019

Date of Summing up: 03 October 2019

Date of Judgment : 16 October 2019

Date of Sentence : 26 November 2019

SENTENCE

1. Alipate Lumelume, you stand convicted for one representative count of rape contrary to section 207(1) and (2)(a) of the Crimes Act. The particulars of the offence are as follows;

Alipate Lumelume between the 1st day of February 2011 and 28th day of February 2011 at Nadi in the Western Division penetrated the vagina of Ivamere Nadroi with his penis without the consent of the said Ivamere Nadroi.

2. You pleaded not guilty to the offence of rape. After a full hearing you were found guilty and were convicted as charged.
3. The complainant is married to your brother. It was proved during the trial that you penetrated the vagina of the complainant in two occasions, between 01 February 2011 and 28 February 2011, without her consent. According to the complainant the first incident happened when she was digging the ground to look for baits to go fishing. You came from behind and covered the complainant's mouth with one hand. You removed her skirt and underwear and climbed on top of her. The complainant tried to push you away. However, you inserted your penis into her vagina. The complainant managed to push you away after a while, and she ran away. The complainant decided not to tell anyone about the incident as she thought it would become a bigger issue.
4. During the same month the second incident happened when she was going to the cassava patch. You came and covered her mouth. You forced her on to the ground. You removed her sulu and inserted your penis into her vagina. According to the complainant you ejaculated inside her vagina. The complainant waited for her husband to return home and when she complained to him, he decided not to report the matter to the police as he felt sorry for you. However, they moved out from the in laws place after that incident. After about one year when the complainant was expecting a child, she once again came back to her in law's place. By that time, you were married and were living elsewhere. After the childbirth the complainant was staying at her in law's place and one day you came and tried to remove her clothes when she was sleeping. Finally, the complainant reported the incidents to the police. Later you were charged for one representative count of rape.

5. You breached the trust of the complainant, who was your sister in law. The complainant feared to complain as it could damage family ties and you repeatedly exploited her vulnerability. The victim impact statement reveals the emotional and psychological impact on the complainant as a result of what she went through. According to the victim impact statement these incidents have changed her life. I consider those as aggravating factors in this case.
6. The Legal Aid counsel filed submissions on mitigation. I have considered the following personal circumstances as well as the mitigating factors;
 - a) You are 31 years old and married with one child.
 - b) You are a Yangona farmer and the sole breadwinner of the family.
 - c) You have cooperated with the police.
7. Further the prosecution informed court that you are a first offender. In any event it should be noted that personal circumstances and previous good behavior carry only a little mitigating value in sexual offences.
8. Although the evidence revealed two incidents of rape, you are charged for one representative count. Therefore, you can be punished only for one of those two incidents.
9. The maximum sentence for rape is life imprisonment. The tariff for adult rape is 7-15 years. (Rokolaba v State [2018] FJSC 12; CAV0011.2017 (26 April 2018).
10. Having considered the objective seriousness of the offence I pick a starting point of 8 years. For the aggravating factors I add 3 years. For the mitigating factors including your personal circumstances and previous good behavior I deduct 2 years.
11. Accordingly, I impose 9 years imprisonment on you.

12. The Legal aid Counsel informed court that you have been in remand custody for a total period of 9 months. In the submissions filed by the State it is noted that you were in remand custody for 55 days. But it appears that you have been in remand custody in two occasions from 29 September 2015 to 17 October 2016 and from 2 October 2019 to date. Thus, you have been in remand custody for a period little less than 15 months.

13. The time in remand custody has to be regarded as a period of imprisonment already served by you. As such, I deduct 15 months from your sentence.

14. Your actions fall well within the scope of domestic violence offences. Although you are charged for one representative count of rape the evidence reveals that once you tried to hug the complainant and, in another occasion, you tried to remove her clothes when she was sleeping. The courts have a duty to impose severe sentences on offenders who repeatedly target persons in domestic context. Your immoral actions must be condemned without reservations. In *Matasavui v State* [2016] FJCA 118; AAU0036.2013 (30 September 2016) the Court of Appeal said that;

“No society can afford to tolerate an innermost feeling among the people that offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilized entity”.

15. Section 18 of the Sentencing and Penalties Act provides that the Court must fix a period during which the offender is not eligible to be released on parole when the Court sentences an offender for more than two years.

16. Having considered the circumstances of this case I decide to set a non-parole period pursuant to section 18 of the Sentencing and Penalties Act.

17. Accordingly, you must serve a period of 7 years and 9 months imprisonment with a non-parole period of 6 years.



Rangajeeva Wimalasena
Acting Judge



At Lautoka

26 November 2019

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Legal Aid Commission