

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

High Court Criminal Case No. HAC 153 of 2017

BETWEEN : STATE

AND : LEMEKI VULI

Counsel : Mr Seruvatu for the State
Mr Raikanikoda for the Accused

Date of Hearing : 13 September 2019

Closing Speeches : 13 September 2019

Date of Summing up: 13 September 2019

Date of Judgment : 16 September 2019

Date of Sentence : 22 November 2019

SENTENCE

1. Lemeki Vuli, you stand convicted of rape contrary to section 207(1) and (2)(b) of the Crimes Act 2009. The particulars of offence read as follows;

“Lemeki Vuli on the 31st day of July 2017, at Nadi in the Western Division penetrated the vagina of Emily Likabuta with his fingers, without her consent.”

2. 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).
3. You were indicted for rape on 15 September 2017. The trial was held on 13 September 2019 and the assessors returned with a majority opinion that you are guilty of the offence of rape. Subsequently you were convicted of rape by the judgment of this court on 16 September 2019.
4. You were 45 years old and the complainant was 24 years at the time of the offence. You were in a de facto relationship with the complainant's sister. The complainant was living with you and her sister at the time of the offence. On 30 July 2017 you drank alcohol with the complainant, her sister and a few other friends. When the friends left, the complainant went and slept in your room. While she was sleeping, she felt someone kissing her and touching her vagina. You inserted your fingers into her vagina. When she turned, she recognized you and your hand was still inside her underwear. The complainant pushed you away and went to the toilet. She woke up her younger sister and told her about the incident. In the morning it was reported to your de facto wife. Later the matter was reported to the Police and you were charged for rape.
5. You breached the trust of the complainant. Further you exploited her vulnerability by committing the offence whilst she was sleeping. I consider those as aggravating factors.
6. I have considered the mitigation submissions filed on your behalf by the Legal Aid Counsel. You are 47 years of age and in a de facto relationship. You have a 6 year old son. You are the sole breadwinner of the family. But it should be noted that personal circumstances bear less mitigatory value. The only significant mitigating factor is that you are a first offender. However in sexual offences even previous good character carries only a little mitigatory value as it was indicated in *Senilolokula v State* [2018] FJSC 5; CAV0017.2017 (26 April 2018) as follows;

“The only factor relating to the defendant which could amount to mitigation is that he was a first time offender, but that cannot be significant mitigation in this case since it was because he was a man of good character that he was entrusted with the responsible position of warden of a hostel for deaf children. I would discount his sentence by one year to reflect that fact.”

7. In this case I pick 8 years as the starting point. I add 2 years for the aggravating factors. I deduct 1 year for mitigation. Accordingly, I impose 9 years imprisonment on you.
8. Initially you had been in remand custody for about two months. After conviction you were again in remand custody nearly for two months. The time in remand custody has to be regarded as a period of imprisonment already served by you. Therefore, I deduct 4 months from your sentence to reflect the time you spent in remand custody.
9. 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. However, in the recent Supreme Court decision in *Nacani Timo V State Criminal Petition No: CAV 0022 of 2018* it was decided that;

“It is not mandatory for a Court to award a non-parole period to every convict. However, a decision to award or decline to award a non-parole period must be taken by a court after hearing a convict and the decision must be accompanied by reasons, with an economy of words, as a part of a just, fair and reasonable procedure keeping the interests of the convict and society(including the victim) in mind”.
10. Sexual offences of any nature are considered degrading and the sentence must reflect the court’s abhorrence. Further you have committed this offence in the

domestic context which makes it more serious. However, I do not find any exceptional circumstances in this case to fix a non-parole period.

11. Accordingly, you will serve a sentence of 8 years and 8 months imprisonment.

12. Further I issue a permanent domestic violence restraining order for non-molestation and for non-contact for the safety of the complainant.

30 days to appeal to the Court of Appeal.



Rangajeeva Wimalasena
Acting Judge



At Lautoka

22 November 2019

Solicitors

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

Solicitors for the Accused: Raikanikoda & Associates / Legal Aid Commission