

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

Criminal Case No.: HAC 009 of 2019

BETWEEN : STATE

AND : WISE EZEKIEL LAGILEVU

Counsel : Mr M Vosawale for the State
Ms N Mishra for the Accused

Date of Hearing : 11 May 2020

Date of Sentence : 29 May 2020

SENTENCE

- [1] The victim is a 20-year old tertiary student. On 13 December 2018 at around 12 noon she was on her way to her mother's workplace at Civic House when the offender approached her pretending to be in need for assistance. He told her that he was a tertiary student and needed her help to retrieve his laptop from his sister's home at Waimanu Road. At first the victim was not sure whether the offender was in genuine need for help, but when he gave her an impression that he was desperate she agreed to help him.
- [2] On the offender's suggestion the victim accompanied him to Waimanu Road using a short cut. When they reached a secluded spot surrounded by cassava patch the offender turned around and told her that he wanted to lick her. At that point the complainant realized that she was in trouble. She cried and begged him not to do anything to her. He threatened to kill her if she did not cooperate. He pushed her to the ground, removed her pants and undergarment and raped her while she was crying and pleading with him. She felt pain in her genitals when he forced himself on her. He also sexually assaulted her by sucking her breasts.

- [3] After raping the victim the offender let her go. She got dressed and hastily made her way to her mother's workplace in a state of distress. Her mother immediately took her to the police and reported the incident.
- [4] The victim was medically examined on the same day. Her injuries were:
- Bruises on the victim's left breast
 - Fresh hymenal tear and bleeding, and
 - Superficial vaginal tears.
- [5] The offender was arrested and interviewed under caution at the Totogo Police Station on 15 December 2018. During his interview the offender gave a false name to the interviewing officer. When the interviewing officer took a break the offender escaped from the police station. He was re-arrested on 23 December 2018. On 24 December 2018, the victim identified the offender in a police identification parade.
- [6] On 26 December 2018, the offender was charged and produced in the Magistrates' Court. On 9 January 2019, his case was transferred to the High Court. On 19 February 2019, the Director of Public Prosecutions charged the offender with the following offences:
- Count 1 - rape contrary to section 207(1) and (2) (a) of the Crimes Act.
 - Count 2 - sexual assault contrary to section 210(1) (a) of the Crimes Act.
 - Count 3 - escaping from lawful custody contrary to section 196 of the Crimes Act.
 - Count 4 - false information to a public servant contrary to section 201(a) of the Crimes Act.
- [7] Upon arraignment on 23 May 2019, the offender pleaded guilty to counts three and four but not guilty to counts one and two. On 25 November 2019, the case was fixed for a 3-day trial on 15 April 2020.
- [8] On 6 March 2020, the offender was sentenced to a total term of 11 ½ years' imprisonment with a non-parole period of 9 years by the High Court at Lautoka after he pleaded guilty to charges of assault with intent to commit rape and rape in Case No HAC

104 of 2017. The offender changed his plea to guilty to the charges of rape and sexual assault in this case after he was sentenced in HAC 104 of 2017. The offender's change of plea to guilty is not because he is genuinely remorseful for his conduct, but because he hopes to receive concurrent sentences for two separate offences of rape. Nevertheless, he is entitled to some credit for his guilty pleas, because in both cases the victim were spared the trauma of giving evidence at the trial and that the court's time and resources were also saved.

[9] The offences are objectively serious. The maximum penalties and the tariffs for the offences are as follows:

- Rape – Life Imprisonment – Tariff range from 7-15 years imprisonment (*Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26 April 2018)).
- Sexual Assault – 10 Years Imprisonment – Tariff range from 2-8 years imprisonment. *State v Laca* [2012] FJHC 1414; HAC252.2011 (14 November 2012).
- Escaping from Lawful Custody – 2 Years Imprisonment – Tariff range from 6-12 months imprisonment (*Tuibua v State* [2008] FJCA 77; AAU0116.2007S (7 November 2008)).
- Giving False Information – 5 Years Imprisonment – Tariff range from 9-24 months imprisonment (*State v Buliqereqere* [2019] FJHC 469; HAC178.2018 (22 May 2019)).

[10] The aggravating factors are that the offences were committed with planning and deceit to gain the trust of the victim. She was threatened with death during the incident. The victim was both physically and emotionally traumatized by the incident. The criminality continued after the offender was arrested for rape and sexual assault. He gave a false name to a police officer and escaped from custody to evade justice. He was at large for about one week before he was apprehended.

[11] The State seeks to declare the offender a habitual offender for the purpose of sentence. The offender has a total of 20 previous convictions since 2007. Most of his convictions

are for robbery or theft offences except one for indecently assaulting a female in 2011. The discretion to declare an offender a habitual offender is provided by section 11(1) of the Sentencing and Penalties Act. In considering the issue the court must be satisfied of two requirements. In this case, both requirements have been met. The offender is convicted of a sexual offence and having regard to his past convictions of a like nature the court is satisfied that he constitutes a threat to the community.

[12] Section 12 of the Sentencing and Penalties Act sets out the factors relevant to determine the length of sentence for a habitual offender. In determining the length of the sentence, the primary purpose of the sentence must be the protection of the community, which may be achieved by imposing a sentence longer than that which is proportionate to the gravity of the offence.

[13] Section 13 of the Sentencing and Penalties Act states that unless otherwise ordered by the court, every term of imprisonment imposed on a habitual offender must be served consecutively on any uncompleted sentences or any other sentence imposed on the offender. Section 13 is consistent with section 22(2) (b) of the Sentencing and Penalties Act, that is, every term of imprisonment imposed on a habitual offender, unless otherwise directed by the court, must be served consecutively with any uncompleted sentence or sentences of imprisonment.

[14] Another matter that the court must take into account is that the offender committed the offences in the present case while on bail in the Lautoka case. The offences in both cases are sexual offences against two young girls. In the Lautoka case, the offender lured the victim to an isolated location using deceit and then attacked her. When the victim resisted he inflicted physical violence on her before raping her. While the offender was released on bail in the Lautoka case he committed a second rape using a similar modus operandi.

[15] Section 22(6) of the Sentencing and Penalties Act states that every term of imprisonment imposed on an offender by a court in respect of an offence committed while released on bail in relation to any other offence must, unless otherwise directed by the court based on exceptional circumstances, be served consecutively on any uncompleted sentence of imprisonment.

- [16] The wording of section 22(6) of the Sentencing and Penalties Act is clear. The decision not to make the sentence consecutive must be based on exceptional circumstances. If there is no exceptional circumstance, then the sentences must be made consecutive.
- [17] The offender is now 31 years of age. He had been in a de-facto relationship and is a father of three children. He comes from a disadvantaged background. His parents separated when he was 4 years old and he was raised by his paternal grandparents. He had witnessed family violence and he claims he himself is a victim of sexual abuse when he was a child. The offender claims that his criminal behavior is linked to the trauma he had suffered while growing up.
- [18] While some criminologists suggest that there is a link between childhood sexual abuse and adult criminal conduct, in the present case, there is no evidence that the offender's sexual and violent propensities are linked to his disadvantaged background or abuse. The offender is rather a deceptive and violent person. There is nothing wrong with his cognitive abilities. In both cases of rape he used his deceptive personality to prey on his victims. He is dangerous and a threat to the community.
- [19] The offender has spent about 15 months in custody while on remand. A downward adjustment is made to the sentence to reflect this period.
- [20] Taking all these matters into account the offender is convicted and declared a habitual offender.
- [21] The offender is sentenced as a habitual offender as follows:
- Count 1 - Rape – 12 years' imprisonment.
 - Count 2 - Sexual Assault – 2 years' imprisonment.
 - Count 3 - Escaping from Lawful Custody – 6 months' imprisonment.
 - Count 4 - False Information to a Public Servant – 12 months' imprisonment.
- [22] All four terms of imprisonment are made concurrent. The total sentence is 12 years' imprisonment. If I make this sentence consecutive with Case No HAC 104 of 2017, the

total sentence will be 23 ½ years' imprisonment. Such a long sentence may have a crushing effect on the offender and may offend the totality principle. To achieve a just and proportionate sentence I order that of the 12 years imprisonment, 7 ½ years to be served concurrently and 4 ½ years to be served consecutively. The total sentence now is 16 years' imprisonment (11 ½ plus 4 ½ years). I fix a new non-parole period of 12 years.



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Hon. Mr Justice Daniel Goundar

Solicitors:

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

