

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 94 of 2017

STATE

V

MIKAELE RADRODRO

**Counsel:** Ms. Sadaf Shameem for the State  
Accused appeared in person [For Sentencing Ms. Patricia Mataika for Accused]

**Dates of Trial:** 5-6 December 2019  
**Summing Up:** 12 December 2019  
**Judgment:** 16 December 2019  
**Sentence Hearing:** 5 February 2020  
**Sentence:** 13 February 2020

*The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "TV".*

## SENTENCE

[1] Mikaele Radrodoro you were charged with the following offences:

### COUNT ONE

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**MIKAELE RADRODRO**, on the 6<sup>th</sup> day of March 2017, at Raiwai, Suva, in the Central Division, unlawfully and indecently assaulted **TV** by fondling her breasts.

**COUNT TWO**

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**MIKAELE RADRODRO**, on the 6<sup>th</sup> day of March 2017, at Raiwai, Suva, in the Central Division, unlawfully and indecently assaulted **TV** by sucking the nipples of her breasts.

**COUNT THREE**

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (b) of the Crimes Act 2009.

*Particulars of Offence*

**MIKAELE RADRODRO**, on the 6<sup>th</sup> day of March 2017, at Raiwai, Suva, in the Central Division, penetrated the vagina of **TV** with his finger, without her consent.

- [2] As could be noted you were charged with two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act No. 44 of 2009 (Crimes Act) and one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act.
- [3] You pleaded not guilty to the charges and the ensuing trial was held over a period of 2 days. At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found you guilty of the said three charges.
- [4] Having reviewed all the evidence, this Court decided to accept the unanimous decision of the three Assessors in finding you guilty in respect of the three charges. Accordingly, you were convicted of the said three charges.

- [5] The prosecution, in support of their case, called the complainant TV, and her aunt, Marica Bogiva. You exercised your right to remain silent.
- [6] The complainant is your niece and is now 22 years of age. Her date of birth is 24 May 1997. Therefore, during the time of the alleged offences, she would have been 19 years old (That is an agreed fact as well).
- [7] It was proved during the trial that, on the 6 March 2017, at Raiwai, Suva, in the Central Division, you unlawfully and indecently assaulted the complainant by fondling her breasts. It was also proved during the trial that, on the 6 March 2017, at Raiwai, Suva, in the Central Division, you unlawfully and indecently assaulted the complainant by sucking the nipples of her breasts.
- [8] It was also proved during the trial that, on the 6 March 2017, at Raiwai, Suva, in the Central Division, you raped the complainant by penetrating her vagina with your finger without her consent.
- [9] As per the Victim Impact Statement filed in Court, it is evident that the complainant has been emotionally and psychologically traumatized by your actions.
- [10] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

*4. — (1) The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

- [11] I have duly considered the above factors in determining the sentence to be imposed on you.
- [12] The offence of Rape in terms of Section 207(1) of the Crimes Act carries a maximum penalty of imprisonment for life.

- [13] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

*“It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage.”*

- [14] In the case of **State v. Marawa** [2004] FJHC 338; HAC 16 of 2003S (23 April 2004); His Lordship Justice Gates stated:

*“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.*

*“A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public’s disapproval and serves as a warning to others who may hitherto regard such acts lightly. One must not ignore the validity of the imposition of condign punishment for serious crime. Lastly the sentence is set in order to protect women from such crimes: **Roberts and Roberts** (1982) 4 Cr. App R(S) 8; **The State v Lasaro Turagabeci and Others** (unreported) Suva High Court Crim. Case No. HAC0008.1996S.”*

- [15] In **The State v Lasaro Turagabeci and Others** (supra) Pain J said:

*“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”*

- [16] It was further held in **Mohammed Kasim v. The State** (supra):

*“.....We consider that in any rape case without aggravating or mitigating features **the starting point for sentencing an adult should be a term of imprisonment of seven years.....**We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point.”[Emphasis is mine].*

[17] It is settled that the tariff for a rape of an adult victim is a term of imprisonment between 7 years and 15 years-As per Fernando J in **State v. Naicker** [2015] FJHC 537; HAC 279 of 2013 (15 July 2015).

[18] This has been confirmed by the Fiji Supreme Court in **Lepani Rokolaba v. The State** [2018] FJSC 12; CAV0011.2017 (26 April 2018).

[19] In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

[20] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 7 years for the third count of Rape.

[21] The aggravating factors are as follows:

- (i) You are the uncle of the complainant. Being so, you should have protected her. Instead you have breached the trust expected from you and the breach was gross.
- (ii) At the time of offending the complainant was residing with you and your wife at your house in Raiwai. Therefore, you and your wife were her guardians while she was residing in Suva.
- (iii) There was a large disparity in age between you and the complainant. The complainant was 19 years of age at the time you committed these offences on her. At the time you were 58 years of age. Therefore, there was a difference in age of nearly 39 years.
- (iv) You took advantage of the complainant’s vulnerability, helplessness and naivety.
- (iv) You are now convicted of multiple offending.

[22] You are now 60 years of age. You are said to be married and having four children between the ages 8 years to 37 years. It is stated that you have a son who has special

needs and relies on you for his daily needs. Further it is said that your wife is sickly and needs assistance and also that you have a skin defect which requires cream to be applied daily. You are said to be employed as a General Manager of Soluk Island Fresh Limited, earning \$12,000 per annum. However, it is the opinion of this Court that all these are personal circumstances and cannot be considered as mitigating circumstances.

- [23] In terms of the Previous Convictions Report filed in Court, several previous convictions have been recorded against you. However, I find that all the previous convictions were prior to 1 August 2006. Therefore, this Court considers you as a person of recent good character.
- [24] Considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence is 12 years.
- [25] Considering your recent good character I deduct 2 years from your sentence. Now your sentence is 10 years for the count of Rape.
- [26] The offence of Sexual Assault in terms of Section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.
- [27] In the cases of *State v. Abdul Khaiyum* [2012] FJHC 1274; Criminal Case (HAC) 160 of 2010 (10 August 2012) and *State v. Epeli Ratabacaca Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of Section 210 (1) of the Crimes Act.
- [28] It was held in *State v Laca* (supra) "The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks."

"A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

**Category 1** (the most serious)

Contact between the naked genitalia of the offender and naked genitalia, face or mouth of the victim.

**Category 2**

- (i) Contact between the naked genitalia of the offender and another part of the victim's body;

- (ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;
- (iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

**Category 3**

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)."

[29] In this case it has been proven that you unlawfully and indecently assaulted the complainant TV by fondling her breasts (Count One) and that you unlawfully and indecently assaulted complainant TV by sucking the nipples of her breasts (Count Two). In my opinion, this would clearly come under category 3 above. As such, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentences at 2 years imprisonment for the first and second counts of Sexual Assault, in terms of Section 210 (1) of the Crimes Act.

[30] Considering the aggravating factors aforementioned, which are common for all offences, I increase your sentence by a further 5 years. Now your sentence is 7 years imprisonment for counts 1 and 2. Considering your recent good character, I deduct 2 years from your sentences. Now your sentence would be 5 years' imprisonment for Counts 1 and 2.

[31] In the circumstances, your sentences are as follows:

Count 1 - Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act – 5 years' imprisonment.

Count 2 - Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act – 5 years' imprisonment.

Count 3- Rape contrary to Section 207 (1) and (2) (b) of the Crimes Act - 10 years' imprisonment.

I order that all the above 3 sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 10 years.

[32] Accordingly, I sentence you to a term of 10 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 8 years of that sentence.

[33] Section 24 of the Sentencing and Penalties Act reads thus:

*“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*

[34] Prior to this trial commencing, you have been in remand custody from 23 March 2017 until 13 April 2017, the date on which you are granted bail by this Court. That is a period of approximately of one month. Thereafter, you were remanded into custody on the 16 December 2019, the date on which this Court pronounced its Judgment and convicted you. Accordingly, you have been in custody for approximately 3 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 3 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[35] In the result, your final sentence is as follows:

Head Sentence - 10 years' imprisonment

Non-parole period - 8 years' imprisonment

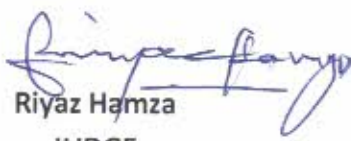
Considering the time you have spent in remand, the time remaining to be served would be as follows:

Head Sentence - 9 years and 9 months.

Non-parole period - 7 years and 9 months.

[36] You have 30 days to appeal to the Court of Appeal if you so wish.



  
Riyaz Hamza  
**JUDGE**  
**HIGH COURT OF FIJI**

AT SUVA

Dated this 13<sup>th</sup> Day of February 2020

Solicitors for the State:  
Solicitors for the Accused:

Office of the Director of Public Prosecutions, Suva.  
Office of the Legal Aid Commission, Suva [Only for Sentencing].