

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 155 OF 2020S

STATE

VS

ALIVATE SOROVAKARUA

Counsels : Ms. A. Vavadakua for State.
Ms. S. Prakash for Accused.

Hearings : 25 and 26 July, 2022.

Judgment : 29 July, 2022.

Sentence : 05 August, 2022.

SENTENCE

1. In a judgement delivered on 29 July 2022, the court found you guilty and convicted you on the following counts in the following information:

“Count 1

Statement of Offence

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

Particulars of Offence

ALIVATE SOROVAKARUA on the 9th day of May, 2020 at Tao Settlement, Naitasiri, in the Eastern Division, had carnal knowledge of M.N. without her consent.

Count 2

Statement of Offence

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

Particulars of Offence

ALIVATE SOROVAKARUA *on the 9th day of May, 2020 at Tao Settlement, Naitasiri, in the Eastern Division, inserted his tongue into the vagina of M.N. without her consent."*

2. The brief facts of the case were as follows. On 9 May 2020, the date of the alleged rape, the complainant was 18 years old. The accused was 34 years old. There was a 16 years age difference between the two. On the morning of 9 May 2020, the complainant (PW1) had a fight with her boyfriend. She then walked along the road towards Vunidawa Police Station. On the way, the complainant met one Jonetani, who befriended her. The two began to converse with each other, and later Jonetani took the complainant to the accused's house, which was some distance away. Joentani left the complainant at the accused's house for a while.

3. The accused became friendly with the complainant. He offered the complainant a meal of beef and cassava. The complainant consumed the food and after a while, she rested. The complainant said, after a while, the accused asked her for sex. She said, she told the accused that she can't have sex with him, as she already had a boyfriend. The accused then grabbed the complainant's hand, kicked her right leg wherein she fell to the floor. The accused then grabbed a pillow, covered the complainant's mouth with the same to stop her raising the alarm, laid on top of her so as to pin her to the floor, took off her pants and panty, then inserted his penis into her vagina, without her consent. The accused then had sexual intercourse with the complainant, until he ejaculated.

4. The complainant was crying while the two were having sexual intercourse. The accused later licked the complainant's vagina, without her consent, and inserted his tongue into the same. The complainant did not give the accused her consent to sex with her, and did not consent to the accused inserting his tongue into her vagina, at the material time. After having sex with the complainant, the accused went outside of his house. The complainant later walked to Vunidawa Police Station and reported the above rape to the police. The accused had been tried and convicted of two rape counts in the High Court, after a two day trial.
5. The offence of rape carried a maximum sentence of life imprisonment (see Section 207 (1) of the Crimes Act 2009.). Parliament therefore views the offence as a serious one. It violates the dignity of a person. It is an unwarranted intrusion into the privacy of a person. It is an ultimate act of showing utter disrespect to a person. Therefore those who commit this offence, must expect a lengthy prison sentence to restore the balance, the harmony and atonement to the victim. For the rape of an adult, that is, anyone over 18 years old, the tariff is a sentence between 7 to 15 years imprisonment. **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993; **Viliame Tamani v The State**, Criminal Appeal No. AAU 025 of 2003, Fiji Court of Appeal. The final sentence will depend on the aggravating and mitigating factors.
6. The aggravating factors were that you breached the trust the teenage complainant put on you. She trusted you not to harm her, when she visited your house. You gave her a meal. You put her at ease. However, you later forced yourself on her by raping her. You must accept that a custodial sentence will have to be given, as the appropriate punishment for you.
7. The mitigating factors were as follows. At the age of 37 years, this was your first offence. You had been remanded in custody for approximately 2 months.

8. On count no. 1 (rape), I start with a sentence of 7 years imprisonment. I add 3 years for the aggravating factors, making a total of 10 years imprisonment. I deduct 3 months for time already served while remanded in custody, leaving a balance of 9 years 9 months. For being a first offender, I deduct 1 year 9 months, leaving a balance of 8 years imprisonment. On count no. 1, I sentence you to 8 years imprisonment.
9. On count no. 2 (rape), I repeat the process and sentence in count no. 1. I sentence you to 8 years imprisonment.
10. The summary of your sentences are as follows:
 - (i) Count No. 1 : Rape - 8 years imprisonment
 - (ii) Count No. 2 : Rape - 8 years imprisonment.
11. Because of the totality principle of sentencing, I direct the above sentences to be made concurrent to each other, making a final total sentence of 8 years imprisonment.
12. Mr. Alivate Sorovakarua, for offending against the complainant as alleged in count no. 1 and 2 of the information, I sentence you to 8 years imprisonment, with a non-parole period of 6 years imprisonment, effective forthwith.
13. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused : **Legal Aid Commission, Suva.**