

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case number: HAC 156 of 2022

STATE

-v-

KELEPI KARACI

Prosecution: Ms. Latu, Luisa
Accused: Mr. Emasi, Inoke [LAC]

Date of Sentence: 15th November, 2024

SENTENCE

1. **KELEPI KARACI**, you are here to be sentenced after pleading guilty on your own accord to the following offence.

Statement of Offence

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

Particulars of Offence

KELEPI KARACI on the 15th day of May 2021, at Naigani Island, in the Eastern Division, had penetrated the vagina of **PENIVANI ROKOLIKU** with his penis, without her consent.

Summary of Facts

2. You also admitted to the summary of facts which was read and explained to you. The facts revealed that on the evening of 14th May 2021 at Naigani Island, Verata, Tailevu, the complainant was at home after dinner, conversing with her cousin, **Rusiate Vakalakovi (“PW1”)**. PW1 invited complainant to a drinking party at a relative’s house in the village. The complainant accompanied PW1 and they started drinking alcohol and after few minutes another first cousin joined them. Since they were making noise, the group decided to go and drink away from the village, at the beach. The complainant saw her nephew

carrying a white 10kg biscuit bucket which contained homebrew. On their way the complainant and the second accused that joined them, arrived at the beach, sat under a big tree and continued drinking.

3. After drinking two glasses, one of complainant's nephew **Iliesa Siganiyavi ("PW2")** joined them and they continued drinking for 3 hours. It was about **1.15am**, the next day, **15th May, 2021**, complainant stood up and stretched her legs and back as she was feeling slightly drunk. She noticed that PW1 and PW2 were walking back to the village.
4. The Complainant decided to follow the two. After a few steps away from the drinking spot, she wanted to relieve herself. As she pulled her panty and jeans down, she felt someone behind her. Complainant looked behind her and saw **Kelepi Karaci (the second accused)**. At the same time, the complainant heard the second accused calling two other relatives in I-taukei saying "she is here". Kelepi grabbed the complainant from behind. The complainant turned and pushed Kelepi away and warned him to stop.
5. However, Kelepi forcefully pulled complainant's t-shirt. He pulled her closer and tried to kiss her. Since the complainant pushed him so hard, the second accused threw three punches. One of the punches landed on her head, one on her shoulder and the other on her back. Complainant screamed for help but the three young men were all sitting and laughing at her.
6. She then saw someone stood up and walked towards her. She continued shouting for assistance. As she tried to fight back, the second accused overpowered her. Although he dragged her, she managed to stand up and moved towards the drinking spot. As she was trying to defend herself from the second accused punches, she saw another one, threw few punches at her. The other person's punches landed on her left eye, head, left ear, face and one on the left lower ear and jaw. She felt her ears bleeding and the blood was also coming out from her mouth and nose. She realized that her face was covered with blood.
7. The second Accused dragged her towards the bush away from the drinking spot. As he did so, she could hear him saying to someone "**lets rape and kill her**". The other person responded by saying "**no, let us just injure her and stab her vagina**" that was the last words she heard as the second accused further penetrated his penis into her vagina, without her consent. She was then unconscious. Furthermore, she states that she could not recall when the second accused and the others had stopped assaulting her.
8. Later, she regained consciousness and returned to her home. At about 1.40am; she met her aunt **Kalara Tinaiciva ("PW3")**. She had her shower. At that time she was struggling to move her body. She experienced severe pain in her vagina and anus. She also had a throbbing headache. In addition to that her eyes were swollen. Her left ear was injured, jaw was locked and she could not open her mouth. Her nose and left ear were bleeding.
9. At about 7pm. PW3 with complainant's sister, **Sovaia Adivirivosa ("PW4")** went to check on complainant in the bedroom. The complainant then told them that she was assaulted and raped by three men. Complainant had steam bath and she noticed corals coming out from her vagina and anus. She could not sleep that night as she was in pain. Complainant was not transported to the hospital due to the unavailability of boat on the island.

10. On the morning of **16th May 2021**, the complainant was transported by boat to QVS landing and from there she was taken in a vehicle to Korovou hospital. Due to the serious injuries, sustained by the complainant, she was rushed to CWM hospital and was admitted at Lancaster Ward whereby she had to undergo surgery.
11. The complainant was medically examined by **Dr Ana Tugia (“PW6”)** on the **18th May 2021**. Her Medical Report dated 18th May 2021 as per paragraph D(12) on Medical Findings states as follows;
 - (a) Posterior wall of vagina – 2cm mucosal laceration - 6cm vertical tear from post vaginal wall into anus
 - (b) No communication of rectal laceration at posterior vaginal wall
 - (c) Mucosal laceration 7 o’clock anal region
12. The matter was reported to Police. The Accused and two others were arrested.
13. Accused was interviewed under caution and formally charged thereafter.
14. The Court is aware that the Accused understands the consequences of his plea and finds him guilty as charged. The Accused is convicted for one count of Rape contrary to section 207 (1) and 2(a) of the Crimes Act, 2009.
15. The Victim Impact Statement of the complainant has been filed in Court. Therein, it is recorded that the complainant has been emotionally and psychologically traumatized by the accused’s actions. The impact of his actions on the complainant is said to have caused her difficulty in sleeping at night. She has nightmares and also finds it difficult to trust anyone.
16. Furthermore, she also finds it difficult to read due to the injuries she sustained in her eyes. She sometimes experiences a severe chest pain and difficulty in passing urine.

Sentencing Guidelines

17. **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.

18. I have carefully considered the above factors in determining the sentence to be imposed on the accused.

Maximum Penalty and Tariff

19. The offence of Rape in terms of Section 207(1) of the Crimes Act carries a maximum penalty of imprisonment for life.
20. The tariff for adult rape is between 7 to 15 years imprisonment. However, there are cases where the sentence may be higher or substantially lower than the starting point. Each case differs depending on the circumstances. (**Kasim v State** [1994] FJCA 25; AAU0021J.93 (27 May 1994) and **State v Marawa** [2004] FJHC 338).
21. 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.”

22. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony 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.”*

23. In **The State v Lasaro Turagabeci and Others** (supra) Pain J had 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.”

24. In the case of **Felix Ram v. The State** [\[2015\] FJSC 26](#); CAV 12 of 2015 (23 October 2015); His Lordship Chief Justice Anthony Gates laid down the following factors that a Court should take into account when sentencing an offender who has been convicted of Rape:

- “(a) whether the crime had been planned, or whether it was incidental or opportunistic;*
- (b) whether there had been a breach of trust;*
- (c) whether committed alone;*
- (d) whether alcohol or drugs had been used to condition the victim;*
- (e) whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;*
- (f) whether the impact on the victim had been severe, traumatic, or continuing;*
- (g) whether actual violence had been inflicted;*
- (h) whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*
- (i) whether the method of penetration was dangerous or especially abhorrent;*
- (j) whether there had been a forced entry to a residence where the victim was present;*
- (k) whether the incident was sustained over a long period such as several hours;*
- (l) whether the incident had been especially degrading or humiliating;*
- (m) If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*
- (n) Time spent in custody on remand;*
- (o) Extent of remorse and an evaluation of its genuineness;*
- (p) If other counts or if serving another sentence, totality of appropriate sentence.”*

Sentence

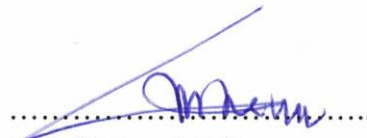
25. In considering the tariff for this offence and the fact that the victim is your first cousin, I commence your sentence at 09 years imprisonment.
26. The aggravating factors are:
 - (i) *You not only raped her but physically assaulted her which resulted in her receiving injuries;*
 - (ii) *The victim was drunk and you took advantage of her vulnerability; and*
 - (iii) *Your cruel actions resulted in her suffering emotional and psychological harm as stated in her Victim Impact Statement.*
27. In considering the above aggravating factors, I increase your sentence by 04 years and arrive at 13 years.
29. The mitigating factors are:
 - (i) You are a first offender. The State too confirms that there are no previous convictions recorded against you. Therefore, Court considers you as a person of previous good character.
30. The court reduces your sentence by 01 year and arrive at 12 years imprisonment.
31. Since you pleaded guilty on the first available opportunity, the court reduces one third from your sentence which is 04 years and finally arrive at 08 years imprisonment.
32. You have been remanded in custody since 18 March 2024, a total of 08 months. That period to be deducted from your sentence in accordance with section 24 of the Sentencing and Penalties Act, 2009. I therefore deduct 08 months from your sentence. Now your sentence is **07 years and 04 months imprisonment**.
33. Considering Section 18 (1) of the Sentencing and Penalties Act, 2009, I impose 6 years and 04 months as non- parole period.
34. Having considered the Domestic nature of the relationship you had with the victim, I order a permanent **Domestic Violence Restraining Order (DVRO) with Standard Non Molestation Conditions** in place, identifying victim as the protected person. You are hereby ordered not to have any contact with the victim directly or by any other means, unless otherwise directed by this Court.

Summary

35. You are sentenced to 07 years and 04 months imprisonment. You will not be eligible for parole until you complete serving 06 years and 04 months of imprisonment.

Appeal Period

36. 30 days to appeal to Court of Appeal.


Waleen M George
Acting Puisne Judge



Dated at Suva this 15th day of November, 2024.

**Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for the Accused**