

VILIAME SAGA

v

THE STATE

[HIGH COURT, 1990 (Fatiaki J) 20 April]

Appellate Jurisdiction

*Sentence - rape- relevance of customary reconciliation- Penal Code (Cap 17)
Sections 149 and 150.*

Dismissing an appeal against a sentence of 4 years imprisonment for rape the High Court discussed the significance of customary reconciliation. It also stressed that rape is not merely a private matter between the parties but is also a public wrong calling for punishment in the public interest.

No case was cited.

Appellant in Person
R. Perera Counsel for the State

Appeal to the High Court against a sentence imposed in the Magistrates' Court.

Fatiaki J:

The appellant was convicted by the Magistrates' Court, Labasa after he pleaded guilty to an offence of Rape. He was sentenced to 4 years imprisonment and 5 strokes of corporal punishment.

He now appeals against the sentence urging several grounds including his guilty plea, the absence of any force, and a subsequent traditional reconciliation between his family and the victim's.

The facts outlined by the prosecutor and admitted by the appellant were that the complainant was returning from bible study with her two younger brothers on the day in question when they were accosted by the appellant who pulled her into the bushes beside the road. There he undressed the complainant put a cloth in her mouth and had forcible sexual intercourse with her. Fortunately however the complainant's uncle appeared on the scene and the appellant ran off. The complainant tearfully related to her uncle what had happened to her.

In sentencing the appellant the learned trial magistrate made specific reference to the appellant's guilty plea as being the only mitigating factor. That ground of appeal must fail and is accordingly dismissed.

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A As to the absence of any force being used the facts that were admitted by the appellant speaks otherwise - he had pulled the complainant into the bushes in the presence of her younger brothers, had placed a cloth in her mouth clearly intended to smother her protestations, and forcibly penetrated her as evidenced by a fresh laceration in the complainant's vagina. That ground of appeal is also dismissed.

B Finally reference was made to 2 letters (1 in English and 1 in Fijian) that were allegedly written to the appellant in prison from the complainant and her grandparents (which were produced at the hearing of the appeal) and in which it is suggested that the appellant had been forgiven for this offence.

C These letters have not been cross-checked with their authors although the court had requested State Counsel to do so and had adjourned the hearing of the appeal for 3 weeks to allow for it to be done. This is an unfortunate occurrence and it is hoped will not be repeated.

Nevertheless learned State Counsel points out that the letter written in English originates from a relative of the appellant, merely describes his difficult childhood and is of fairly marginal value in terms of mitigation.

D The second letter in Fijian however has been translated for the court and details how the appellant's parents have reconciled with the complainant and her grandparents according to Fijian customary practices and tradition.

This is a relevant factor for the consideration of the court in assessing sentence. Its significance and weight however will vary from case to case and this court does not seek to fix any limitations.

E However it will be obvious that traditional reconciliation has a greater social impact in a village context than say an urban one. Personal participation and confirmation by the victim may also be significant considerations.

The complainant's grand parent's letter contains the following interesting passages:

F "The boy's parents have approached me and apologise in the true Fijian tradition. We have accepted that in our tradition if both sides agree like what we have done, it solves everything notwithstanding the seriousness of the wrong committed.

G After all these, I went to the Police Station and reported everything I have explained above and my decision to withdraw my report. I was surprised to be informed by the Police that the case cannot be cancelled and that it will be heard in court.

In our tradition, this is not the first time, we have done it often and the courts respected it when it was referred to it. The boy's parents brought us the most valuable and highly respected Fijian artifact that is the whales tooth.

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We had kept it and returned it only when the boy was sent to prison. It is disgraceful to us when that happens and we are still holding the whaletooth.”

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These passages highlight the dilemma that often confronts law enforcement agencies such as the police and the courts in assessing the significance of traditional dispute resolving mechanisms.

But it must be remembered that a crime is much more than a personal private matter between victim and offender. It is a public wrong which must be punished in the public interest notwithstanding that the parties may be reconciled.

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That is not to say that the courts or the criminal law seek to intervene in the private lives of the citizens of this country but rather the courts have a duty to safeguard against exploitation and corruption of others, particularly those who are specially vulnerable.

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The appellant has 2 previous convictions for Rape for which he received concurrent prison sentences of 2 years. He has not learnt anything from his past experience and deserves an extended term.

The appeal against sentence is accordingly dismissed. However the sentence of 5 strokes of corporal punishment being now time-barred is formally set aside.

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(Appeal dismissed)

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