

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 034 OF 2012S

STATE

VS

TANIELA RATUNAQELE

Counsels : **Mr. M. Vosawale for the State**
Mr. J. Savou for Accused
Hearings : **15th February, 8th, 15th March and 25th April, 2013**
Sentence : **3rd May, 2013**

SENTENCE

1. On 15th February, 2013, the accused, in the presence of his counsel, pleaded guilty to the following charges:

COUNT ONE

Statement of Offence

ATTEMPTED RAPE: Contrary to Section 208 of the Crimes
Decree, No. 44 of 2009.

Particulars of Offence

TANIELA RATUNAQELE on the 28th day of January, 2012 at Delaitokatoka, Suva, in the Central Division, attempted to have carnal knowledge of **L. L. R** without her consent.

COUNT TWO

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Decree, No. 44 of 2009.

Particulars of Offence

TANIELA RATUNAQELE on the 28th day of January, 2012 at Delaitokatoka, Suva, in the Central Division, unlawfully and indecently assaulted **L. L. R** by licking her vagina.

2. On 15th March, 2013, the prosecution read the Summary of Facts in court. It was as follows. The accused, on 28th January, 2012, was 41 years, not married but with two children aged 18 years and 10 years. He ran a small canteen at Delaitokatoka, Suva. He reached class 3 level education. The complainant was a 6 years old child, living in the neighbourhood with her family. On 28th January, 2012, after 5 pm, her mother sent her to the accused's canteen to buy some mango skin. When she reached the canteen, the accused was returning from his shopping. They went inside the canteen. The complainant told the accused she wanted to buy some mango skin. The accused took the money from her, and suddenly pulled her to his room.

3. He then forcefully took off her clothes. The accused then licked the child's vagina. He then lay on top of her and rubbed his penis on her vagina. In his police caution interview statement, he admitted he wanted to penetrate the complainant's vagina. [Questions and Answers 26, 27 and 28]. He later ejaculated. The complainant ran out of his room and informed her mother. The matter was reported to police. She was medically examined the same day at CWM Hospital. The accused was later charged for the current offences.

4. The court checked with defence counsel to see that all the elements of the offences were admitted by the accused. Defence counsel said, the accused admitted he attempted to rape the child complainant, at the material time. They were aware that she was incapable of giving her consent, as a matter of law. Defence counsel also admitted, on behalf of the accused that, he sexually assaulted the child complainant, by licking her vagina. As a result of the above admissions, the court found the accused guilty as charged on count no.1 and 2, and convicted him accordingly.
5. Section 208 of the Crimes Decree 2009 prescribes a maximum penalty of 10 years imprisonment for “attempted rape”. Yet, Section 44(1) of the Crimes Decree 2009 reads as follows:
“...A person who attempts to commit the offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed...”
6. The maximum penalty for rape is life imprisonment [Section 207(1) of the Crimes Decree 2009]. The tariff for the rape of a child is a sentence between 10 to 15 years imprisonment: see **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; **Mark Lawrence Mutch v The State**, Criminal Appeal No. AAU 0060 of 1990, Fiji Court of Appeal; **The State v N. K.** Criminal Case No. HAC 155 of 2010, High Court, Suva; **State v Simone Talenasila**, Criminal Case No. HAC 11 of 2010, High Court, Lautoka. In my view, to reconcile the above authorities, the dictates of Section 44(1) of the Crimes Decree 2009 must be followed. It is arguable that, previous case authorities limiting the tariff for attempted rape to 1 to 5 years imprisonment, may be overtaken by the effect of Section 44(1) abovementioned.
7. Section 210 (1)(a) and (2) of the Crimes Decree 2009 prescribes a maximum penalty of 14 years imprisonment for sexual assault that involved the licking of the complainant’s vagina. I accept what His Lordship Mr. Justice Paul Madigan said in **State v Abdul Khaiyum**, Criminal Case No. HAC 160 of 2010, that the tariff should be a sentence between 2 to 8 years imprisonment, with the higher sentence reserved for the more serious sexual assaults, and the low sentence on the less serious assaults.
8. The aggravating factors, in this case, were as follows:

- (i) This was an abuse of a 6 years old child. Children are always vulnerable, and the courts have repeatedly said, they will act to protect children in society, by passing severe sentence.
- (ii) This was also a breach of trust case. Canteen owners in a neighborhood always stand in a position of trust to children who are sent to buy items from their shop. The accused's offending violates that trust.
- (iii) The accused's offendings amounted to violating the rights of this child to live peacefully and happily in the neighbourhood.

9. The mitigating factors were as follows:

- (i) You pleaded guilty to the offence, although this was 12 months after the first call in court. You nevertheless saved the court's time, and the need for the complainant to re-live her ordeal in the courtroom, by giving evidence;
- (ii) At the age of 41 years, this is your first offence;
- (iii) You have been remanded in custody since your first appearance in the Nasinu Magistrate Court on 30th January, 2012, that is, 1 year 3 months ago.

10. On the "attempted rape" charge [count no. 1], I start with a sentence of 10 years imprisonment. For the mitigating factors, I decrease the same by 5 years to 5 years imprisonment. For the aggravating factors, I increase the same by 5 years to 10 years imprisonment. For attempting to rape the 6 years old female complainant, I sentence you, Taniela Ratunaqele to 10 years imprisonment.

11. On the "sexual assault" charge [count no. 2], I start with a sentence of 5 years imprisonment. I add 3 years for the aggravating factors, making a total of 8 years imprisonment. For the mitigating factors, I decrease the same by 3 years, leaving a balance of 5 years imprisonment. For sexual assaulting the 6 years old female complainant, I sentence you, Taniela Ratunaqele, to 5 years imprisonment.

12. I make the 5 years imprisonment on count no. 2 partly concurrent and partly consecutive to the sentence in count no. 1. Three years of the 5 years sentence is consecutive to the sentence in count no. 1, and 2 years is concurrent to the sentence in count no. 1.
13. In summary, your total sentence on both counts is 13 years imprisonment, effective forthwith. You are to serve a non-parole period of 11 years imprisonment.
14. The name of the complainant is permanently suppressed to protect her privacy.

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JUDGE

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