

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 322 OF 2011S

STATE

VS

WATANASIO CAMAIRA

Counsels : **Ms. S. Naidu and Ms. J. Prasad for the State**
Mr. T. Muloilagi for Accused

Hearings : **15th to 19th, 22nd and 24th April, 2013**

Summing Up : **25th April, 2013**

Judgment : **25th April, 2013**

Sentence : **3rd May, 2013**

SENTENCE

1. On 19th April, 2013, you pleaded guilty to “sexually assaulting” the complainant, your daughter, on 7th August, 2011, at Tailevu in the Central Division, contrary to section 210 (1)(a) of the Crimes Decree 2009 [count no. 1]. You admitted you indecently fondled her breasts at the time, and you were found guilty and convicted accordingly.
2. On the other six counts of “sexual assault”, contrary to section 210(1)(a) of the Crimes Decree 2009 [counts nos. 2, 3, 4, 5, 6 and 7] and the “incest” count, contrary to section 223 of the Crimes

Decree 2009 [count no. 8], the three assessors and the court unanimously found you guilty as charged on 25th April, 2013, after an 8 days trial. You were convicted accordingly on all counts.

3. The brief facts of your case were disturbing. It revealed the worst kind of parental abuse a father can do to his own daughter. Morally, as a father you were supposed to look after your 16 year old daughter. You were married with 6 children. All were girls, except for a son. You were a subsistence farmer and looked after your family well, until 7th August, 2011. You returned home late at night, woke your daughter, and fondle her breasts. You only stopped, when she protested.
4. For the next six nights, between the 8th and 13th August, 2011, your daughter went through a nightmare. Late at night on 8th August, 2011, you woke her up, then you forcefully fondled and licked her breasts and vagina. She was shocked and disgusted. Despite her protests, you warned her not to tell her mother or anyone else, or you will do something bad to her. You repeated the same on the night of 9th, 10th, 11th, 12th and 13th August, 2011. Your daughter was devastated as a result of your immoral behaviour. She was disgusted. She was scared as a result of your threats.
5. On 28th August, 2011, you took your three eldest children, including the complainant, to the family farm to do some weeding. Late in the afternoon, as it was getting dark, you sent the other two children home to cook the family dinner. You planned this so that you would be alone with the complainant. Then you ordered her to take off her clothes, and lie on the ground naked. You then forcefully inserted your penis into her vagina, and had sexual intercourse with her. By doing the above, you committed the offence of “incest”.
6. I will start with “incest” [count no. 8], as it is the most serious of the offences in counts nos. 1 to 8. As I said in **State v Anare Tubailagi**, Criminal Case No. HAC 123 of 2011S, High Court, Suva, **“...Incest by a Relative, is always a serious offence. Pursuant to Section 223(1) of the Crimes Decree 2009, it carries a maximum penalty of 20 years imprisonment, but if the victim is aged 13 years and less, the maximum punishment is life imprisonment. The above penalties are somewhat similar to the offence of “Incest by males”, pursuant to Section 178 of the repealed Penal Code, Chapter 17...”**

7. In State v Anare Tubailagi (supra), I accepted His Lordship Mr. Justice John Connor's view in Babu Ram v The State, Criminal Appeal No. HAA 023 of 2004L that, the tariff for "incest by a relative" should be 9 to 15 years imprisonment for "incest against adults", and 10 to 14 years imprisonment for "incest against children". I take the above to be the tariff in this case.

8. On the offence of "sexual assault" [counts nos. 1 to 7], I accept and adopt what His Lordship Mr. Justice Paul Madigan, said in States vs Abdul Khaiyum, Criminal Case No. HAC 160 of 2010S:
"...8. The offence of sexual assault has a maximum term of ten years. No tariff has yet been set for this new offence, but given that the summary offence of indecent assault has a maximum penalty of five years with a tariff of one to four years (Ratu Penioni Rakoto HAA 68 of 2002), the tariff for this more serious offence with double the penalty should be in the range of two to eight years.
9. Any sexual assault which is invasive will be either aggravated sexual assault under Section 210 (2) and 210(3) or it will be rapes, so the most serious sexual assaults *simpliciter* will involve contact with genitalia by hand or mouth, and less serious assaults perhaps a "brushing" of breasts, genitalia or buttocks by hand, when the victim is clothed..."

9. The aggravating factors, in this case, were as follows:
 - (i) Breach of Parental Trust. The relationship between parents and their children is the most sacred of all relationships in any societal units. Parents have the huge responsibility to groom their children to become progressive members of society. In fact, the collective morals of society depends on how parents conduct themselves morally with their children. What you have done to your daughter is the utmost betrayal by a parent against his child. You breached the trust this girl had in you;

 - (ii) By committing these offences, you have wrecked your family. Your children are now staying with other relatives, for their own personal development. You, on the other hand, will have to spend a considerable time in custody, to atone for your misdeeds;

- (iii) By committing these offences, you have ruined your daughter's life. She wanted to hang herself as a result of what you did. She is now scared of her parents – you for committing these offence, and her mother, for taking your side. She is ashamed to call you her father. She is scared of her family. She has stopped going to school. She feels that her family is not supporting her. All these were brought about by your offendings. I only hope this young girl is properly counselled to rise above the miseries you've caused her;
- (iv) You have shown no remorse. To this day, you are saying that your daughter lied, despite the three assessors and the court finding you guilty as charged, on all counts.

10. The mitigating factors are as follows:

- (i) At the age of 41 years, this is your 1st sexual offence;
- (ii) You have been remanded in custody since 16th September, 2011, when you first appeared in the Nausori Magistrate Court, that is 1 year 7 months 16 days ago.

11. I start with the "incest" charge [count no. 8]. I start with a sentence of 11 years imprisonment. For the aggravating factors, I add 6 years, making a total of 17 years imprisonment. For the mitigating factors, I decrease the above by 4 years to 13 years imprisonment. On count no. 8, I sentence you to 13 years imprisonment.

12. On count no. 2, I start with a sentence of 5 years imprisonment. For the aggravating factors, I add 3 years, making a total of 8 years imprisonment. For the mitigating factors, I decrease the above by 2 years, leaving a balance of 6 years imprisonment. On count no. 2, I sentence you to 6 years imprisonment.

13. I repeat the above sentence and process for counts no. 1, 3, 4, 5, 6 and 7.

14. In summary, your sentences are as follows:

- (i) Count No. 1 : Sexual Assault : 6 years imprisonment
- (ii) Count No. 2 : Sexual Assault : 6 years imprisonment

- (iii) Count No. 3 : Sexual Assault : 6 years imprisonment
- (iv) Count No. 4 : Sexual Assault : 6 years imprisonment
- (v) Count No. 5 : Sexual Assault : 6 years imprisonment
- (vi) Count No. 6 : Sexual Assault : 6 years imprisonment
- (vii) Count No. 7 : Sexual Assault : 6 years imprisonment
- (viii) Count No. 8 : Incest : 13 years imprisonment

15. Because of the principle of totality of sentencing, I direct that all the above sentence are concurrent to each other, that is, a total sentence of 13 years imprisonment.
16. Watanasio Camaira, for the offences you committed against your daughter, I sentence you to 13 years imprisonment, with a non-parole period of 12 years, effective forthwith.
17. There will be a permanent suppression of the complainant's name 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.**