

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 315/ 2012

BETWEEN : **STATE**

AND : **KINIVILIAME SOVALEVU**

COUNSELS : **Ms L Latu for the State**
: **Ms V Tamanisau Accused**

Date of Trial : **24-25/02/ 2014**
Date of Summing Up : **28/02/ 2014**
Date of Judgment : **03/03/2014**
Date of Sentence : **05/03/2014**

[Name of the victim is suppressed. She will be referred to as T.K]

SENTENCE

[01] The Director of Public Prosecution had preferred the following charges against the accused above named.

The First Count

Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (a) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

Kiniviliame Sovalevu on the 13th July 2012 at Nabua in the Central Division had unlawful carnal knowledge of T.K, without her consent.

Alternative Count

Statement of Offence

DEFILEMENT OF PERSON BETWEEN 13 AND UNDER 16 YEARS OF AGE:
Contrary to Section 215(1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

Kiniviliame Sovalevu on the 13th July 2012 at Nabua in the Central Division had unlawful carnal knowledge of T.K, a young girl of the age of 15 years.

- [02] After trial on the charges, the accused was found not guilty on the first charge. But he was convicted for alternative charge of Defilement of a girl between 13 years and 16 years of age.
- [03] According to the victim on 13/07/2012, her parents had gone for a funeral in the village leaving her with her Aunt. The accused who was her neighbor came to her house and gave his phone to her to watch some video clips. After some time he called her to his house which is about 5 meters away from her house. She had gone to the accused's house and watch video clips in the mobile. The accused then came from behind, put her on the floor and closed her mouth with a pillow. He then took off her skirt, lay on top of her, removed his $\frac{3}{4}$ pants and put his private part in to her private part. She could not either shout or resist as the accused was too strong. He had performed sexual intercourse about $\frac{1}{2}$ an hour. She never consented for sex at that time.
- [04] She did not tell anybody about the incident until the accused had told her Aunt Fane about the incident. Fane had told her mother and after interrogation, her mother had then reported the matter to the police. She was in class 08 when this incident happened. After reporting the matter to the police, she was subjected to a medical examination.

- [05] The victim had given two statements to police. 1st one was made one month after the incident and 2nd one was made two months after 1st one. In her statement victim contradicting her original position taken in the examination chief, said that incident had happened in her house and the accused had closed her mouth with his hand and fondled her breast and her vagina. She further said in her statement that the accused had sex with her for about 5 minutes. She admitted that the accused had told her aunt about the incident. Until such time she had kept it secret.
- [06] When Elesi Naicuvacuva mother of the victim, had inquired the incident from the victim, she had told her that the accused after calling the victim to his flat put a pillow over her mouth and attempted to have sex with her.
- [07] Dr. Unaisi Tabua had examined the victim at Colonial War Memorial Hospital on 15/08/2012. She is a medical officer and currently reads for her masters in Gynecology. Consent for medical examination was obtained from victim's mother. In the history to doctor, victim had said that when she was at home alone in July, both parents had gone to the village, a guy by the name of Kiniviliame had asked her to come to his flat to watch movie with him. She did went but during the movie the accused started kissing her and lay her down and had sex with her-penetrating sex. Hymen remnant noted without laceration or tear. In addition to the history given to the doctor, she had told about her sexual involvement with another person. According to her sexual assault cannot be excluded. Her findings are consistent with the history given by the victim.
- [08] Accused in his caution interview given to D/Cpl 2929 Setoki Taveta, admitted that he had sexual intercourse with the victim with consent. In his evidence he denied rape but he admits that he had sexual intercourse with consent. The matter came to light after he told this to the victim's Aunt Fane.
- [09] As per section 215(1) of the Crimes Decree No: 44 of 2009 the maximum sentence for defilement of person between 13 years and 16 years is 10 years imprisonment.

Tariff for Defilement

- [10] The usual range of sentences is from a suspended sentence for an accused in a "virtuous relationship" whilst the higher end of sentence is for offenders who are

older and in position of trust. (**Rokowaqa CA 37/2004, State v Kabaura [2010] FJHC 280**).

[11] In the case of **Elia Donumainasava v State** Crim.App.HAA 32 of 2001 Justice Shameem J said;

“The offence is clearly designed to protect young girls who have entered puberty and experiencing social and hormonal changes, from sexual exploitation.”

[12] In the case of **State v Raibevu** [2012]FJHC 1040;HAC27.2011(27 April 2012)Justice Madigan highlighted the same tariff where the 61 year old accused was sentenced for 3 years imprisonment with a minimum period of 2 years before he is eligible for parole.

[13] The accused is 41 years of age and married. He has three children. When arrested he co-operated with the police and made confession in his Record of Interview. He claims the victim was a willing partner and he had sexual intercourse with her consent.

[14] I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009, especially Sections 4(1), 4(2) and 15(3) in order to determine the appropriate sentence.

[15] The accused was considered by the victim as neighbor, who resided at the same area at Nabua Muslim League. It is a relationship of trust which had been breached by the accused.

[16] The accused completely disregarded of clearly defined societal, religious and traditional rules that prohibits sexual relations with minor girls.

[17] The age gap between the accused and the victim is 25 years.

[18] The lack of remorse demonstrated by the accused person for what the victim has suffered emotionally and physically due to this incident.

- [19] The accused person has no adverse records and therefore comes before this court as a person of previous good character.
- [20] The accused is married with three children. He is the sole bread winner of the family.
- [21] The accused has spent 32 days in remand for this case.
- [22] He has co-operated with the police and admitted that he had sexual intercourse with the victim.
- [23] The accused had offered traditional apology to the victim's family.
- [24] Considering all aggravating and mitigating circumstances I take 03 years imprisonment as the starting point. I add 01 year for aggravating factors to reach the period of imprisonment at 04 years. I deduct 02 years for the mitigating factors.
- [25] In summary you are sentenced to 02 years imprisonment for the charge of Defilement of a girl between 13 years and 16 years of age.
- [26] Acting in terms of Section 18(1) of the Sentencing and Penalties Decree, I impose 20 months as non-parole period.
- [27] 30 days to appeal.

P Kumararatnam

JUDGE

At Suva

05/03/ 2014