

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 119 OF 2013

STATE

-v-

JONE VASIGA

Counsels : Mr. A. Singh for the State
Ms. Jiuta for the accused

Date of Sentence : 15 May 2014

(Name of the victim is suppressed she is referred to as ML)

SENTENCE

1. You are charged as follows:

COUNT 1

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (b) of the Crimes Decree, 2009.

Particulars of Offence

JONE VASIGA, between the 1st day of June 2012 and the 30th day of June 2012, at Nadi in the Western Division, procured ML, without her consent, to touch his penis.

COUNT 2

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree, 2009.

Particulars of Offence

JONE VASIGA, between the 1st day of June 2012 and the 30th day of June 2012, at Nadi in the Western Division, used his penis to penetrate the vagina of **ML**, without her consent.

COUNT 3

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree, 2009.

Particulars of Offence

JONE VASIGA, between the 1st day of January 2013 and the 31st day of January 2013, at Nadi in the Western Division, used his penis to penetrate the vagina of **ML**, without her consent.

2. On 12th May 2014, after Ruling of Voir-dire inquiry was delivered, you pleaded guilty to all three charges against you and admitted the Summary of Facts same day.
3. The Summary of Facts submitted by the State Counsel states as follows:

JONE VASIGA (the accused) is 44 years old. The victim **ML** is 16 years old.

The accused is the victim's step-father. The family resides at Nadele, Sabeto, Nadi.

The victim makes three complaints. The first is that in June 2012, she had been at home. The house was empty and she had been cooking the family's dinner. The accused returned home first. It was evening and he closed the doors and windows to the house. He then lay down and called the victim to massage his stomach. The accused then asked the victim to give him her hand. He then used her hand to touch his penis. The victim resisted but the accused overpowered her. He was interrupted when they heard a neighbor calling to the household to turn on their lights as it was dark. When the victim's mother, **ASERI TUBAI** returned home the victim informed her about the incident. **ASERI TUBAI** got angry on the accused and confronted her husband about the incident. The accused admitted to sexually assaulting the victim and he then offered a yaqona sevusevu (gift) to the victim the following night.

ASERI TUBAI was pregnant and she decided to forgive him after the accused promised her would not touch her child again.

The victim complains of a second incident. She states that in the same month of June 2012, **ASERI TUBAI** had sent her to get some dalo leaves from their farm (a 30 minute walk from their home). At the farm, she saw the accused approaching. The victim upon

seeing the accused, requested for some money to buy things from the shop. The accused agreed however, he stated that he will only give her money if she agrees to have sex with her. The victim refused. The accused then forced her to the ground and removed her clothes. He inserted his penis into her vagina. She said that it hurt. She shouted for help and struggled. The accused continued to insert his penis into her vagina until he ejaculated outside. The accused told the victim that if she told her mother he would cut her throat. The victim recounts being in pain from the rape and says that she saw blood coming out from her vagina following the rape. She did not tell anyone of the incident.

In January 2013, the accused sent her to pick chillies. She had to travel from her house to the chillie trees. She had not realized that the accused had followed her. He pushed her down to the ground and removed her sulu and undergarments. He then inserted his penis into her vagina. He ejaculated twice. She says that he licked her vagina also. The accused threatened to kill her if she speaks to anyone about the incident.

The victim never consented to the act of sexual intercourse on both occasions.

The accused was always possessive of the victim and became verbally and physically abusive if he saw her talking to boys. In May 2013, the family went to visit relatives. Whilst there the accused asked the victim to come inside the house to see him and she refused. He then told her if she did not he would kick her. The victim's aunty **MARIANA ROKOLOMA**, heard this and asked the victim if the accused always talked to her that way and the victim opened up and told her aunt of the incidents in June 2012 and January 2013. The family of the victim approached the accused in relation to the incident and he admitted the allegations put to him.

A week later, the family reported the matter to Police.

The accused was arrested and interviewed at Sabeto Police Station. The accused admitted to the allegations put to him.

The victim was medically examined in June 2013. The doctor indicated that the victim's hymen was no longer intact.

4. After carefully considering the Plea of you to be unequivocal, this Court found you guilty for one count of Sexual Assault and two counts of Rape and accordingly you are convicted for one count under Section 210 (1) (b) of the Crimes Decree and two counts under Section 207 (1) and (2) (a) of the Crimes Decree respectively.
5. Accused **Jone Vasiga** you stand convicted for one count of Sexual Assault and two counts of Rape.

6. The maximum penalty for the offence of Sexual Assault is 14 years imprisonment.
7. Hon. Mr. Justice Paul Madigan in *State v Laca* [2012] FJHC 1414; HAC 252.2011 (14 November 2012) followed the United Kingdom's Legal Guidelines for sentencing which divide sexual assault offending into three categories.

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

- (a) Contact between the naked genitalia of the offender and another part of the victim's body;
- (b) Contact with the genitalia of the victim by the offender using part of his or her body other than genitalia, or an object;
- (c) Contact between either the clothed genitalia of the offender and naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim;

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than genitalia).

8. Making the victim to touch your penis comes within the category two and therefore I start your sentence at 6 years.
9. Aggravating factors;
 - (a) You breached the trust between step father and daughter,
 - (b) The victim was of a younger and tender age and age gap is 28 years,
 - (c) Victim was subjected to more than one sexual act,
 - (d) You made her removed from her mother to a care of Social Welfare,
 - (e) You had traumatized the life of the victim,

Considering all, I increase your sentence by 3 years, now the sentence is 9 years imprisonment.

10. Mitigating circumstances;

- (a) You are first offender at the age of 44 years,
- (b) You are a father of 2 children and sole bread winner.

Considering all, I reduce 1 year from your sentence, now your sentence is 8 years imprisonment.

11. According to the Crimes Decree the maximum punishment for rape is Imprisonment for life. It is a serious offence.
12. The tariff for rape is well settled since the Judgment of then Hon. Mr. Justice A.H.C.T. Gates in State v Marawa [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
13. In Mohamed Kasim v The State (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed

"We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. 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. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point."

14. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 15 years.
15. In State v Mario Tauvoli [2011] FJHC 216, HAC 027.2011 Hon. Mr. Justice Paul Madigan held that:

"Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound."

In this case 42 year step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

16. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 Hon. Mr. Justice Priyantha Nawana held that:

“The accused’s engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB’s standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and assess even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused’s caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance.”

17. Considering the above, I commence your sentence at 12 years imprisonment for each charge of Rape. I add 4 years for the aggravating factors mentioned above and deduct one year for the mitigation. Now the sentence is 15 years for each charge of Rape.

18. I deduct three years for your early Guilty plea. Now your sentence is 12 years.

19. You were in remand from 17.6.2013 for a period of 11 months. I deduct that period from above sentence. Now your sentence is 11 years 1 month.

20. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 10 years as non parole period.

21. Your sentences are as follows:

- (i) 1st count of Sexual assault - 8 years
- (ii) 2nd count of Rape - 11 years 1 month
- (iii) 3rd count of Rape - 11 Years 1 month

22. The Fiji Court of Appeal in **Vukitoga v State** [2013] FJCA 19; AAU 0049.2008 (13 March 2013) cited with approval the following citation of D.A. Thomas, Principles of Sentencing (2nd edition, 1979) p. 56-57 which was cited in High Court of Australia judgment **Mill v The Queen** [1988] HCA 70:

“The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and

each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong'; "when... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behavior and ask itself what is the appropriate sentence for all the offences."

23. Considering the totality principle, I order all the sentences to run concurrently.

24. Having considered the Domestic nature of the relationship you had with the victim, I order a permanent **Domestic Violence Restraining Order (DVRO)** in place, identifying victim ML 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.

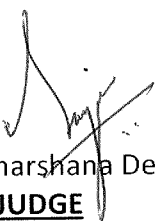
Summary

25. You are sentenced to 11 years 1 month imprisonment. You will not be eligible for parole until you complete serving 10 years of imprisonment.

26. 30 days to appeal to Court of Appeal.



**At Lautoka
15th May 2014**


Sudharshana De Silva
JUDGE

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