

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 197 OF 2013

STATE

-v-

KOLINIO RAIKOTI RAISAMU

Counsels : Mr. A. Singh for the State
Mr. R. Kumar for the accused

Date of Sentence : 08 July 2014
(Name of the victim is suppressed she is referred to as ESN)

SENTENCE

1. The accused is before the Court for sentence, after being convicted to the following charges.

COUNT 1

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) and (3) of the Crimes Decree, 2009.

Particulars of Offence

KOLINIO RAIKOTI RAISAMU, on the 21st day of October 2013, at Lautoka in the Western Division, inserted his finger into the vagina of ESN, a child aged 8 years and 6 months.

COUNT 2

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Decree, 2009.

Particulars of Offence

KOLINIO RAIKOTI RAISAMU on the 21st day of October 2013, at Lautoka in the Western Division, inserted his penis into the vagina of **ESN**, a child aged 8 years and 6 months.

2. You pleaded not guilty to above charges. Following trial lasting four days in this Court you were found guilty on above counts against you.
3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial the Court decided to concur with the verdict of guilty in respect of both charges.
4. The following facts were proven in evidence during the trial. The victim was living with the family of the accused at the time of the incident. The 8 year old victim said in her evidence that she was raped by the accused on 21.10.2013. The accused has inserted his fingers and penis into her vagina.
5. You had no remorse for your above conduct.
6. According to the Crimes Decree the maximum punishment for rape is Imprisonment for life. It is a serious offence.
7. The tariff for rape is well settled since the Judgment of 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.
8. 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.”

9. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 16 years.
10. 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.

11. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 Hon. Mr. Justice Priynatha 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 asses 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.”

12. Considering the above, I commence your sentence at 11 years imprisonment for each charge of Rape.

13. The aggravating factors are:

- (i) Serious breach of trust between uncle and niece
- (ii) The Age gap of 20 years
- (iii) The victim was of very young and tender age- 8 years
- (iv) Lack of remorse
- (v) You took advantage of the victim’s vulnerability
- (vi) Total disregard to the victim’s safety and wellbeing

14. According to victim impact report filed the victim would get up in the middle of the night about three times screaming and crying like she was scared about something and she urinates herself. Further her education is also affected.

15. I add four years for above aggravating factors. Now your sentence is 15 years.

16. The mitigating factors are:

(i) At the age of 29 you are first offender.

17. Father Pacelomio gave evidence on behalf of the accused to say that he knew the accused as good, hardworking, young boy. He knew him for 24 years. He was confused about the allegation against the accused. He will assist him to become a good citizen.

18. I deduct 1 year for the above mitigating factors. Now the sentence is 14 years.

19. You were in remand from 21.10.2013 up to now, for a period of 8 months and 16 days. Acting under Section 24 of the Sentencing and Penalties Decree, I deduct 8 months and 16 days from your sentence. Now your sentence is 13 years and 3 months and 15 days.

20. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 12 years as non- parole period.

21. Your sentences are as follows:

- (i) 1st count of Rape - 13 years 3 months and 15 days
- (ii) 2nd count of Rape - 13 years 3 months and 15 days

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."

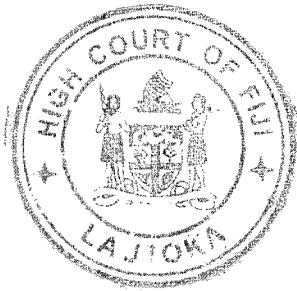
23. Considering the totality principle, I order all the sentences to run concurrently.


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 ESN 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 13 years 3 months and 15 days imprisonment. You will not be eligible for parole until you complete serving 12 years of imprisonment.

26. 30 days to appeal to Court of Appeal.




Sudharshana De Silva
JUDGE

At Lautoka
08th July 2014

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