

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 316/ 2012

BETWEEN : STATE

AND : ISIKELI VEIQARAVI

COUNSEL : Mr M Vosawale for the State

Mr A Vakaloloma for the Accused

Date of Hearing : 04/09/2014

Date of Sentence : 09/09/2014

[Name of the victim is suppressed. She will be referred
to as L.B.)

SENTENCE

[01] The Director of Public Prosecution had preferred the following charge (amended) against the above named accused.

Count One

Statement of Offence

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

Particulars of Offence

ISIKELI VEIQARAVI on 05th day of August 2012 at Keteira Village, Moala, in the Central Division unlawfully and indecently assaulted L.B.

- [02] When the Plea was taken up on the 08th day of February, 2013 the accused had pleaded not guilty to the charges (Rape and Sexual Assault) against him. But on 03/09/2014, when the trial was about to begin, the accused through his counsel informed that he wished to reconsider his plea. Amended information was read out and the charge explained (Sexual Assault) in both languages. Accused after understanding the charge pleaded guilty to the charge. Accepting the Plea to be unequivocal this court found him guilty and convicted him under Section 210(1) (a) of the Crimes Decree No: 44 of 2009.
- [03] State Counsel submitted the following summary of facts of which the accused admitted.
- [04] On 5th August 2012 at about 2-3pm L.B. (complainant) was at home when the accused's wife asked her to check the fishing nets and collect crabs near Uciwai District School. The complainant met the accused at the village headman's compound the accused then informed the complainant to accompany him to his house to drop some crabs and return home.
- [05] When they reached the accused's house, the accused told the complainant to accompany him back to school to check on his cow that was behind a house. The complainant followed the accused, upon passing the village generator shed; the

accused told the complainant to enter inside a vacant house-to which the complainant refused stating she was afraid of her father. The accused then grabbed the complainant tightly and forced her inside the vacant house-while inside the vacant house, the accused forcefully took off the complainant's T-shirt and fondled her breast whilst standing, the accused then removed the complainant's ¾ trousers-the complainant stood in front of the accused with her pants on. The accused then rubbed his right middle finger on top of the complainant's vagina, at the same time she saw the accused's erected penis as he masturbated in front of the complainant until the accused ejaculated.

- [06] The complainant was medically examined on the 13th of August 2012 some 8 days later; there were no specific medical findings present. The accused was cautiously interviewed on the 20th of August 2012, whereby he made full admissions to the alleged offence.

The Law

- [07] The maximum penalty for indecent assault is 10 years imprisonment as per Section 210 of the Crimes Decree No: 44 of 2009.

Tariff for Sexual Assault

- [08] In the case of **State v Epeli Ratabacaca Laca HAC 252 of 2011**, Madigan J in sentencing the accused said:

*"It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in **Abdul Kaiyum HAC 160 of 2010** that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.....A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines 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

- (i) *Contact between the naked genitalia of the offender and another part of the victim's body;*
- (ii) *Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
- (iii) *Contact between either the clothed genitalia of the offender and the 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 the genitalia).

The fondling of naked breasts comes as category 3 offending as discussed"

- [09] The tariff set for sexual assault is between 2-8 years imprisonment.
- [10] The accused committed the offence on a child who was 13 years of age at the time of the offence. The victim is the cousin of the accused. The accused took the victim to an empty house removed her clothes fondled her breasts and rubbed his middle finger on top of the victim's clothed vagina.
- [11] The accused was born on 07/10/1982 and was 29 years at the time of offending. He is married and has children. He is a subsistence farmer and does fishing to assist his family.
- [12] Victim was medically examined but no injury found in her vagina.

[13] 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), to determine an appropriate sentence.

[14] Now I consider the aggravating factors:

1. The victim was 13 years old and was attending class 8 at the time of the incident.
2. The victim is the cousin of the accused person.
3. The act done to the victim by the accused person took away the victim's dignity in the society.
4. The accused took advantage of the trust that the victim had placed on him as a cousin.
5. The accused person has shattered the close ties of his family, the victim's family and their relatives.
6. The accused has instilled a sense of fear into the victim which may affect her whole life.

[15] Now I consider the mitigating circumstances:

- (a) The accused pleaded guilty before the commencement of the trial and saved court's time.
- (b) By pleading guilty he has saved the victim from having to re-live her ordeal all over again whilst giving evidence.
- (c) Accused was 29 years old at the time of committing the offence. He is now 32 years old and has no record of any previous convictions. He is a first offender.
- (d) He is married and has children.
- (e) The accused is a subsistent farmer and does fishing to support his family which includes his old parents.
- (f) He is the sole bread winner of the family.
- (g) The accused is the Village Headman holding position as Turaga ni Koro and is member and a lay preacher in the Methodist Church in his village in Moala Island, Lau.
- (h) He is remorseful.

(i) The accused tendered a traditional apology to the victim's family according to the Fijian Custom.

[16] Considering all aggravating and mitigating circumstances I take 02 years imprisonment as the starting point. I add 02 years for aggravating factors to reach the period of imprisonment at 04 years. I deduct 02 years and 06 months for the mitigating factors. In summary you are sentenced to 18 months imprisonment.

[17] The accused was arrested on 20/08/2012 and was in remand nearly six months before he released on bail by the court. I deduct this period from the sentence. Now the sentence is 12 months imprisonment.

[18] The counsel for the accused requests for leniency and that the sentence be suspended or an alternative sentence be imposed. As per Madigan J in **State v Epeli Ratabacaca Laca** supra the sexual acts committed on the victim by the accused come within category 2 and 3 of United Kingdom's Legal Guidelines for Sentencing. This prevents imposing a non-custodial sentence.

[19] The final sentence of the accused is 12 months imprisonment.

[20] 30 days to Appeal.

 
P. Kumararatnam
JUDGE

At Suva
09/09/2014