

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 056 OF 2013S

STATE

VS

ERONI TAVATAVANAWAI

Counsels : Ms. A. Vavadakua for State
Mr. J. Savou for Accused
Hearings : 5 and 6 November, 2014
Summing Up : 7 November, 2014
Judgment : 7 November, 2014
Sentence : 21 November, 2014

SENTENCE

1. In a judgment delivered on 7 November 2014, the three assessors and the court found you guilty and convicted you on the following counts:

FIRST COUNT

Statement of Offence

RAPE: *Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

ERONI TAVATAVANAWAI between the 1st day of October 2012 and the 31st day of October 2012 at Nadaro Village, Tailevu, in the Central Division, penetrated the vulva of L. F, a child under the age of 13 years, with his tongue.

SECOND COUNT

Statement of Offence

RAPE: *Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

ERONI TAVATAVANAWAI *between the 1st day of October 2012 and the 31st day of October 2012, at Nadaro Village, Tailevu, in the Central Division, penetrated the vagina of L. F, a child under the age of 13 years, with his finger.*

2. The brief facts were as follows. Between the 1st and 31st October 2012, you were 47 years old, married with three children aged 16, 7 and 5 years old. You ran a canteen in the village. The female complainant was aged 7 years old, at the time. At the material time, she came to your canteen to buy some bean and chewing gum. In the canteen, you sat her on a chair, put both her legs on your shoulder, and penetrated her vagina with your tongue (count no. 1) and finger (count no. 2). The matter was reported to the police. You were subsequently charged with rape and found guilty of the same.
3. "Rape", as a sexual offence, had always been viewed seriously by society and the law makers of this country. It carried a maximum sentence of life imprisonment. It is a serious invasion of a person's privacy and dignity. The tariff for the rape of an adult is a sentence between 7 to 15 years imprisonment. For the rape of a child, the tariff is between 10 to 15 years imprisonment: **Mohammed Kasim v The State**, Criminal Appeal No. 21 of 1993, **Viliame Tamani v The State**, Criminal Appeal No. AAU 0025 of 2003, **Mark Mutch v The State**, Criminal Appeal No. AAU 0060 of 1990; **Anand Abhay Raj v The State**, Criminal Appeal No. AAU 0038 of 2010 – all Court of Appeal decisions; and **State v Savenaca Turagakece**, Criminal Case No. HAC 252 of 2012S, High Court, Suva. The final sentence will depend on the aggravating and mitigating factors.
4. In this case, the aggravating factors, were as follows:
 - (i) Breach of Trust. The 7 year old female complainant was related to you. Her grandfather was your elder brother. In the "i-taukei" context, she was also your granddaughter. As such, you were supposed to look after her and care for her. But you breached the trust she had in you, when you committed the two offences against

her. You must accept the fact that you will have to pay for this misdeed by a severe prison sentence.

(ii) Sexual offending against a child. The court had previously said that it will “step in” to protect the most vulnerable in our society, that is, our children. The children of this country are the future of the Republic of Fiji. Those who sexually violate their rights must expect a severe sentence from the courts, as a warning to others. The courts will not stand by and allow these serious offendings against children.

(iii) You showed no remorse throughout the proceeding. You even allowed this child complainant to re-live her ordeal in the courtroom by giving evidence.

5. The mitigating factors were as follows:

(i) At 47 years old, this is your first offence;

(ii) You are a married man, with three young children to support;

(iii) You have been remanded in custody for the last 2 weeks.

6. On count no. 1, I start with a sentence of 11 years imprisonment. I add 4 years for the aggravating factors, making a total of 15 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 12 years imprisonment.

7. I repeat the above process and sentence for count no. 2.

8. In summary, your sentences are as follows:

(i) Count No. 1 : 12 years imprisonment.

(ii) Count No. 2 : 12 years imprisonment.

9. Because of the totality principle of sentencing, I direct that the above sentences be made concurrent to each other, making a total sentence of 12 years imprisonment.

10. Eroni Tavatavanawai, for raping the child complainant with your tongue and finger, I sentence you to 12 years imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith.

11. The child's name is permanently suppressed to protect her privacy.



Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**