

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 42 OF 2014

STATE

-v-

JOSEVA COKAKOSOVA

Counsels : Mr. A. Singh for the State
Mr. E. Maopa for the accused

Date of Sentence: 26 November 2013

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

SENTENCE

1. You are charged as follows:

Statement of Offence

FIRST COUNT
REPRESENTATIVE COUNT
Statement of Offence

RAPE: Contrary to section 207 (1) (b) of the Crimes Decree 44 of 2009

Particulars of Offence

JOSEVA COKAKOSOVA between the 1st day of September, 2010 and the 31st day of December, 2011 at Nadi in the Western Division penetrated the vagina of **ALTT**, with his finger, without her consent.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) of the Crimes Decree 44 of 2009

Particulars of Offence

JOSEVA COKAKOSOVA between the 1st day of January, 2012 at Nadi in the Western Division penetrated the vagina of **ALTT**, with his penis, without her consent.

THIRD COUNT

REPRESENTATIVE COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) of the Crimes Decree 44 of 2009

Particulars of Offence

JOSEVA COKAKOSOVA between the 2nd day of January, 2012 and the 31st day of December, 2012 at Nadi in the Western Division penetrated the anus of **ALTT**, with his finger, without her consent.

FORTH COUNT

REPRESENTATIVE COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to section 212 (1) of the Crimes Decree 44 of 2009

Particulars of Offence

JOSEVA COKAKOSOVA between the 1st day of January, 2013 and the 31st day of December, 2013 at Nadi in the Western Division unlawfully and indecently assaulted **ALTT**.

FIFTH COUNT

REPRESENTATIVE COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to section 212(1) of the Crimes Decree 44 of 2009

Particulars of Offence

JOSEVA COKAKOSOVA between the 1st day of February, 2014 and the 28th day of February, 2014 at Nadi in the Western Division unlawfully and indecently assaulted **ALTT**.

2. On 29th May 2014 you pleaded Not Guilty to all charges against you. On 19th November 2014 you informed Court that you want to change the plea and pleaded guilty to all the charges. You admitted the Summary of Facts on the next day 20th November 2014.
3. The Summary of Facts submitted by the State Counsel states as follows:

"On 30th March 2014, at around 11am, victim's mother reported that Josefa Cokakosova, 42 years, Police Officer of Border Police sexually assaulted her daughter ALTT, 18 years, a student between September 2010 to February 2014.

The accused, Josefa Cokakosova is married and has been staying with the family since the year 1999. The accused is the step-father of the victim, ALTT. The accused also has 3 other children with victim's mother. The victim is the oldest amongst the siblings.

In 2010 the victim was in Form 3 when this whole incident started. Late one night during the school time at about 12am to 1am, between the months of September and November 2010, the accused entered the room of the victim and started touching her breast (fondling). The accused removed the victim's clothes despite her refusing and then pushed his fingers inside her vagina. The victim never consented to the above act. The victim was really scared and didn't know what actions to take. This sexual brutality by the accused continued from September 2010 to November 2010, almost every night whilst the mother of the victim was sleeping in her own room.

In 2011, the accused with the family moved to government quarters at Koroivolu, Nadi where the same act was repeated in the night by the suspect. On 1st January 2012, around 3am the victim suddenly woke up to find her step-father (accused) fondling her breast. The Accused was sitting on the edge of the victim's bed. The accused then slowly removed the clothes of the victim, despite the victim resisting and then penetrated the vagina of the victim with his penis. The victim never consented to this act.

In 2012 during one occasion when the accused was transferred to a quarters in Waqadra, Namaka, the victim was sleeping in the night when the suspect came to her and started rubbing his penis on the victim's buttock. The victim also felt a finger inside her anus as it was painful and she cried for pain when this was done. The victim could feel her thighs wet as the suspect had ejaculated on her buttocks which slide to her thigh.

In 2013, when the victim was in Form 6, the accused would enter her room in the wee hours of the morning and fondle the breast and vagina of the victim. This happened once every month in the year 2013.

The last incident took place sometimes in the month of February 2014 and the same was witnessed by the younger sister of the victim. She saw her father, the accused touching her step sister in an indecently manner. She reported the same to her mother, and that is how this matter was reported to Police.

The suspect was arrested and interviewed under caution. The Accused admitted to committing the offence. The victim was medically examined by Doctor Shaireen Prasad on the 31st of March 2014."

4. After carefully considering the Plea of you to be unequivocal this Court found you guilty for three counts of Rape and two counts of Indecent assault and accordingly you are convicted for three counts of Rape and two counts of Indecent assault.
5. Accused **Joseva Cokakosova** you stand convicted for three counts of Rape and two counts of indecent assault.
6. The tariff for rape is well settled since the Judgment of His Lordship Mr. 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.
7. 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.”

8. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 16 years. It was held by Court of Appeal in Raj v State [2014] FJCA 18; AAU0038.2010 (5.3.2014) Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the accepted range of sentences is between 10 and 16 years.
9. 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.

10. 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.”

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

12. Aggravating factors;

- (a) The victim was of a younger and tender age,
- (b) Victim was subjected to more than one sexual act,
- (c) You have breached the trust between step-father and daughter,
- (d) The age gap is about 20 years,
- (e) You had made the victim sexually active at a young age,

Considering all I increase your sentence by 4 years now the sentence is 16 years imprisonment.

13. Mitigating circumstances:

- (a) You are first offender at the age of 42 years
- (b) You are remorseful and apologized to the victim and her mother
- (c) You have undergone Christian counseling while in remand

Considering all I reduce 1 year from your sentence now your sentence is 15 years imprisonment.

14. For the Guilty plea I deduct 4 years and now your sentence is 11 years.

15. You were in remand from 31.3.2014 for a period of about 8 months. I deduct that period from above sentence. Now your sentence is 10 years and 4 months.

16. Considering section 18 (1) of the Sentencing and Penalties Decree I impose 9 years and 6 months as non-parole period.

17. The maximum penalty for the offence of Indecent assault is 5 years imprisonment.

18. The tariff for the offence of Indecent assault is between 1 to 4 years imprisonment as decided in Ratoka v State [2002] FJHC 168;HAA 0068J.2002S. Further court observed that:

'Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty which saves the victim the trauma of giving evidence.'

19. I start the sentence for each charge of indecent assault at 2 years and add 2 years for the aggravation factors mentioned above and deduct 1 year for the mitigating factors.

20. For each charge of indecent assault I sentence you for a period of 3 years with a non parole period of 2 years.

21. Your sentences are as follows:

- | | | | |
|-------|---|---|-------------------|
| (i) | 1 st count of Rape | - | 10 years 4 months |
| (ii) | 2 nd count of Rape | - | 10 years 4 months |
| (iii) | 3 rd count of Rape | - | 10 years 4 months |
| (iv) | 4 th count of Indecent assault | - | 3 years |
| (v) | 5 th count of indecent assault | - | 3 years |

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:

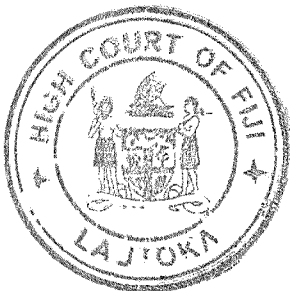
"The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate 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

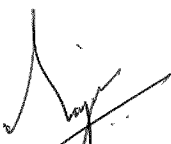
looks wrong'; "when... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behavior and ask itself what is the appropriate sentence for all the offences."

23. Considering the totality principle I order the sentences of all charges 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 ALTT 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 10 years and 4 months imprisonment. You will not be eligible for parole until you complete serving 9 years and 6 months of imprisonment.
26. 30 days to appeal to Court of Appeal.




Sudharshana De Silva
JUDGE

At Lautoka
26th November 2014

Solicitors: Office of the Director of Public Prosecution for State
Babu Singh & Associates for the Accused