

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC. 334 of 2015

STATE

V

ERONI VAKALEVULEVU

Counsel : Ms. T. Qalinauci with Ms. S. Serukai for State
Ms. C. Choy for Accused

Date of Sentence : 11th December 2015

SENTENCE

1. Eroni Vakalevulevu, you were charged for the following offences by the Director of Public Prosecutions;

FIRST COUNT

Statement of offence

ASSAULT WITH INTENT TO COMMIT RAPE: Contrary to Section 209 of the Crimes Decree No. 44 of 2009.

Particulars of offence

ERONI VAKALEVULEVU, on the 16th day of October, 2015 in Nakorouto Settlement, Tailevu, in the Central Division, assaulted **NASI VAKACEGU** by punching her on the back with intent to commit rape.

SECOND COUNT

Statement of offence

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

Particulars of offence

ERONI VAKALEVULEVU, on the 16th day of October, 2015 in Nakorouto Settlement, Tailevu, in the Central Division, unlawfully and indecently assaulted **NASI VAKACEGU** by rubbing his penis on the body of the said **NASI VAKACEGU**.

THIRD COUNT

Statement of offence

RAPE: Contrary to Section 207 (1) and (2) (c) of the Crimes Decree No. 44 of 2009.

Particulars of offence

ERONI VAKALEVULEVU, on the 16th day of October, 2015 in Nakorouto Settlement, Tailevu, in the Central Division, penetrated the mouth of **NASI VAKACEGU**, with his penis without her consent.

2. You pleaded guilty for all the above charges on 02nd December 2015 and you were convicted accordingly.
3. According to the summary of facts;
 - a) You are the stepfather of the victim who is 14 years old. On the 16th October 2015, while your wife and two children were attending a funeral in Naivicula village, you asked the victim who was staying at a Pastor's house at that time to come home with you. You then called her to the bedroom, you caressed her breasts and you forcefully undressed her. You told her to bend down to the floor and you rubbed your penis against her body.
 - b) You then punched her back, strangled her neck, grabbed her hair and told her to suck your penis.

- c) You then held her neck to force her mouth to open and inserted your penis into her mouth.
 - d) You stopped when you saw the victim crying.
- 4. Section 209 of the Crimes Decree 2009, provides that the maximum sentence for the offence of Assault with intent to commit Rape is 10 years. In the case of *Jone Tabaka v State* [2013] FJHC 667, this court had endorsed an imprisonment of 1 to 4 years as the tariff for this offence.
- 5. The offence of Sexual Assault under section 210(1) of the Crimes Decree carries a maximum sentence of 10 years imprisonment. Following the case of *State v Laca* [2012] FJSC 1414, this court has been applying an imprisonment term between 2 to 8 years as the tariff for Sexual Assault.
- 6. The maximum sentence for the offence of Rape is imprisonment for life and the sentencing tariff for rape of a child is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12).
- 7. Section 17 of the Sentencing and Penalties Decree 2009, reads thus;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”
- 8. The three offences you are convicted of are based on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Decree, I opt to impose an aggregate sentence of imprisonment for the three offences.
- 9. I consider the following as aggravating factors;
 - a) You are victim’s stepfather. There is a breach of trust
 - b) You are 20 years older than the victim

- c) There was planning involved and you used your authority to compel the victim to be alone with you during the time of offence
 - d) You used violence on her
10. I consider the following as your mitigating factors;
 - a) You pleaded guilty at the first available opportunity
 - b) Your counsel says you are remorseful
 - c) You are 34 years old and married with 2 children
 11. In 2008, you have been convicted of the offence of attempted Rape. Therefore, I cannot consider you as a person of previous good character.
 12. I consider 10 years imprisonment as the starting point of your sentence. Considering the aforementioned aggravating factors, I add 7 years. Now your sentence is 17 years imprisonment.
 13. You pleaded guilty at the earliest opportunity. Thereby, you saved Court's time and also prevented the victim from having to relive her ordeal by giving evidence in this Court. Therefore, you deserve a one third reduction of your sentence. I deduct 5 years and 8 months of your sentence for your early guilty plea and arrive at 11 years and 4 months. For the other mitigating factors, I deduct a further 1 year.
 14. I hereby sentence you for an imprisonment term of 10 years and 4 months. I order that you are not eligible to be released on parole until you serve 9 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree 2009.
 15. The offence of Rape attracts the highest term of imprisonment considering the other two offences you are convicted of and the above sentence is within the tariff of the offence of Rape when it comes to a child victim. Hence, I am satisfied that the above aggregate sentence of imprisonment does not exceed the total effective period of imprisonment had this court imposed separate terms of imprisonment for the three charges.

16. Section 24 of the Sentencing and the Penalties Decree reads thus;

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

17. I note that you were first produced before the Magistrate Court on 19th October 2015. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 2 months.

18. Accordingly, the time remaining to be served is as follows;

Head Sentence – 10 years and 2 months

Non-parole period – 8 years and 10 months

19. 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read "Vinsent S. Perera". The signature is written in a cursive style with a large initial "V".

Vinsent S. Perera

JUDGE

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