

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 91 OF 2011

STATE

-v-

SENIRUSI RAUQE

Counsels : Ms. L. Latu for the State
The accused in person

Date of Sentence : 27 February 2015
(Name of the victim is suppressed she is referred to as AS)

SENTENCE

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

Statement of offence

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

Particulars of the offence

SENIRUSI RAUQE between the 30th of April 2011 and 1st of May 2011 at Vatutavui Village, Tavua in the Western Division had carnal knowledge of AS without her consent.

2. You pleaded not guilty to above charge. Following trial lasting three days in this Court, you were found guilty on above count against you.
3. After considering the unanimous verdict of Not Guilty of the assessors and having reviewed the evidence and summing up in this trial, the Court decided not to accept the opinion of the assessors in respect of the charge and found you guilty and convicted of the charge.

4. The following facts were proven in evidence during the trial. The victim in this case was 14 years old at the time of the incident. You are a relative of the victim. You have forcibly entered the house of the victim in the night when she was alone and forcibly inserted your penis into the vagina of the victim.
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. 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. This was upheld by the Supreme Court.
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 the charge of Rape.

13. The aggravating factors are:

- (i) Serious breach of trust by the victim towards you as a relative,
- (ii) Victim is of young age,
- (iii) Lack of remorse,
- (iv) You let the victim relive her experience in Court,
- (v) You took advantage of the victim’s vulnerability,
- (vi) The total disregard of the victim’s safety and wellbeing.

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

15. The mitigating factors are:

- (i) At the age of 26 you are first offender
- (ii) You are married with one child aged 2 years and your wife is pregnant

16. I deduct 2 years for the above mitigating factor. Now the sentence is 13 years.

17. You were not in remand for this case as you were granted bail on the first day you were produced in the Magistrate Court.

18. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 11 years as non- parole period.

19. 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 AS 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.

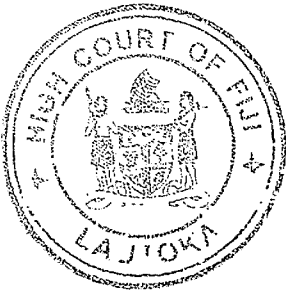
20. Your sentences are as follows:

- (i) Count of Rape - 13 years imprisonment


Summary

21. You are sentenced to 13 years imprisonment. You will not be eligible for parole until you complete serving 11 years of imprisonment.

22. 30 days to appeal to Court of Appeal.



At Lautoka
27th February 2015


Sudharshana De Silva
JUDGE

Solicitors: Office of the Director of Public Prosecution for the State
The Accused in person