

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 274 of 2014

STATE

v

ESEKAIA DAULAKO

Counsel: Ms S. Navia with Ms S. Tivao for the State
Mr. M. Yunus (L.A.C.) for the accused.

Date of trial: 20, 21 July 2015,
Date of Conviction: 22 July 2015
Date of Sentence: 22 July, 2015

SENTENCE

1. The accused has been found guilty after trial and convicted by this Court of two counts of rape of a 13 year old girl. The first count was a representative count of penile rape of the girl in March and April 2014 and the second count a count of digital rape of the same girl in the same period.
2. The accused was related to the father of the girl and had been living in the house with the family ever since she was a baby. In February and April 2014 the father was abroad and the accused was assisting the mother to care for the children. On at least 4 occasions in the period he entered the bedroom where she slept with her younger brother and sister. It was usually about ten in the evening and he would waken her

and invade her with his finger. She would struggle and push him away. He would then come back and force himself on her, invading her with his penis. The girl eventually told her mother about this sexual abuse and the matter was reported to the Police.

3. At trial his defence was a total denial of physical contact with the girl, he believing that his correcting her in household duties had led to her concocting this story out of spite.
4. Rape of children is now far too common in Fiji and the heavy custodial terms authorised by the Supreme Court in Anand Abhay Raj CAV003 of 2014 do not appear to be having much of an effect on abatement of the scourge. A range of sentence between 10 and 16 years is the recommended tariff set by the Supreme Court in Raj [supra] and time will tell if these penalties are sufficiently punitive to deter would be child aggressors.
5. In a written submission in mitigation, counsel for the accused submits that the accused is 36 years old, single and works as a fish seller. He lives with and supports his 58 year old mother. He is educated to Form 3 level and has no previous convictions. He has been suffering for some years with a linguinal hernia which he said at trial caused him sexual disfunction, a claim the assessors obviously disbelieved. In the light of this illness, counsel asks the Court not to impose a minimum term, so that he can have advantage of good behavior and an early release.
6. The State has filed a Victim Impact Report which in a case such as this is vitally important. In that report the young lady victim (now 15 years) states that the abuse has affected her to the extent that she feels disgusted with herself and cannot concentrate on tasks at school. She

is understandably wary of being around men and she fears running into the accused.

7. For the first count of representative penile rape I take a starting point of 12 years imprisonment. For the gross breach of trust as an "uncle" and a caregiver I add to that a term of 4 years giving an interim total sentence of 16 years. For the time spent in remand (3 months) and for his clear record I deduct one year which means he will serve a total sentence for the representative rape of 15 years.
8. For the second count of digital rape, I repeat the exercise conducted in the preceding paragraph arriving at a total sentence of 15 years. This sentence will be served concurrently with the sentence for count one.
9. Counsel's request for the non-imposition of a minimum term falls on deaf ears. A crime as abhorrent as sexual abuse on a 13 year old girl embarking on her own sexual maturity deserves a minimum term. In fact every serious crime deserves a minimum term to prevent any prospect of very early release. There will however be room available for earning remission through good behavior once the minimum term is served. That is the intention of the legislature in both the Sentencing & Penalties Decree and in the Prisons and Corrections Act 2006.
10. The accused will serve a total term of 15 years imprisonment with a minimum term of 12 years before he is eligible for parole.



P.K. Madigan
Judge

At Suva
22 July, 2015