

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 304 of 2014

Between: STATE

And : RICHARD KASHMIR KUMAR

BEFORE: Hon. Justice Paul Madigan

Counsel: Mr. S. Nath for the State
 Mr. S. Kumar for the accused

Dates of Hearing: 28 November and 18 December 2014

Date of Sentence: 30 January 2015

SENTENCE

1. The accused was tried in the Suva Magistrates Court on one count of rape, and one count of indecent assault. The indecent assault was not charged as an alternative count as the Magistrate believed. The accused was found guilty of and convicted of the rape count on the 14th November 2014 and pursuant to section 190 of the Criminal Procedure Decree he was sent to this court for sentencing. The indecent assault count was not dealt with and it should have been. This Court will proceed as requested to pass sentence for the rape conviction but will then remit the case back to the

Magistrate to deal with the indecent assault. It is surprising that neither Counsel below would not have pointed out this lacuna to the Magistrate.

2. By s.22 of the Sentencing and Penalties Decree, any sentence following a conviction for indecent assault would be necessarily concurrent to this sentence for rape and it may well be the prosecutor may elect not to proceed on the charge, but it must nevertheless be dealt with because it is still extant.
3. The facts of the case are that the victim called Lucy (not her real name) was 12 years old and living with her family next door to the accused who lived with his wife and 2 children. The two dwelling houses were in a crowded estate and only meters apart. On a day in June 2009, Lucy's brother fell ill and her mother and the accused's wife took him to the hospital leaving Lucy and her sister alone because the father was away. Lucy's mother made arrangements to have Lucy and her sister go to the accused's house to sleep for the night. Lucy went to sleep when she was awoken by the accused touching her and telling her that he wanted to have sex with her. She said "No". She went back to sleep but again was woken by the accused who dragged her into the sitting room, asking her again for sex. She again said "No" and when she went back to sleep for the third time she was awoken by finding the accused on top of her and undressing her. He then proceeded to rape her for about 10 to 15 minutes. He held his hand over her mouth. He told her that if his wife came back unexpectedly she was to say nothing. The wife did return and the accused told her (the wife) to stay with Lucy's mother because she should not be alone. So the wife left and went next door for the night. On another occasion Lucy was told to go to the accused's house and take a benzene light. Afraid to go in, she stayed at the entrance but the accused came and squeezed her breasts and touched her genitals. The accused's wife eventually learned of the episodes and reported it to the Police.

4. The accused is 22 years of age. He is married with 2 children. He is an upholsterer by profession. He is the only breadwinner for his family and for his elderly mother and sister. He still maintains that he is not guilty, despite the conviction, which stance shows a complete lack of remorse. There is very little that can be said in his favour apart from the fact that he has a clear record until now.
5. The maximum penalty for rape is life imprisonment and there being so many rapes of children in Fiji in these times the law is well settled. The Supreme Court has affirmed in **Anand Abhay Raj** CAV 0003 of 2014 that sentences for the rape of children should be between 10 and 16 years.
6. It is highly aggravating that the accused should breach the trust placed in him by the mother of the two girls who were sent to stay the night with him when the other members of both families were at the hospital.
7. I adopt a starting point of 12 years imprisonment for this crime and add three years for the aggravation of breach of trust. I deduct one year for his clear record and for the time he has spent on remand. There are no other mitigating factors. Family circumstances are not remarkable, and not deserving of discount.
8. The sentence the accused will serve is one of 14 years with a minimum to be served of 12 years before he is eligible for parole.



At Suva
30 January 2015

A handwritten signature in black ink, appearing to read "Paul K. Madigan".

Paul K. Madigan
Judge.