

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 223 of 2015

STATE

v.

IOWANE RATAWAKE

Counsel: Ms. Kumar D. for State
Mr. Tawake P. for Accused

Date of Sentence: 28th November 2016

SENTENCE

[Name of the victim is suppressed and will be referred to as V.L.]

1. Iowane Ratawake, you were charged with one count of Sexual Assault.

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Decree 2009.

Particulars of Offence

IOWANE RATAWAKE between the 29th and 30th day of May, 2015 at Gau in the Central Division, touched the buttocks of **V.L.**, a 12 year old child.

2. You pleaded guilty to the charge and admitted the summary of facts submitted by State. Having satisfied that you pleaded guilty to the charge on your own free will, this court convicted you of the charge.
3. The brief facts of the case as submitted by State and admitted by you are:

“BACKGROUND

1. The complainant is 12 year old V.L., a class 8 student. The accused is Iowane Ratawake, 25 years, farmer.
2. Both the complainant and the accused person resided at Navukailagi village in Gau. The complainant’s mother and the accused person are cousins.
3. On 29 May 2015, the complainant was asleep on the sitting room floor of the accused person’s house with her grandmother and sister. She went to sleep at about 10pm.

OFFENCE

4. In the early hours of 30 May 2015, the complainant felt someone was touching her buttocks. She woke up and saw her undergarment was down on her thighs and the accused lay beside. He touched the complainant’s buttocks with his finger once.
5. The complainant’s grandmother moved in her sleep. The accused stood up and went to his room. At about 5am, the complainant reported the matter to her mother who was sleeping in another house in the same village.
6. On 4 June 2015, Siteri Reki, the complainant’s mother, reported the matter at Qarani Community Post in Gau.
7. The complainant was taken for medical examination on 5 June 2015 at the Qarani Health Centre. No injuries were noted.

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CAUTION INTERVIEW

8. The accused was interviewed under caution in I-taukei language on 8 June 2015 at the Levuka Police Station. The interview was later translated into English.
 9. The accused person made full admissions to touching the complainant's buttocks after lowering her pants and undergarment. He said that he returned to his house at about midnight from the village fundraising. When he returned, the complainant, her grandmother and sister were sleeping in the sitting room. He slept and woke after sometime to relieve himself. When he got back, he went to the complainant and began touching her."
4. Crimes Decree No. 44 of 2009 has categorised sexual assaults into three categories depending on the gravity of offending.

Section 210

(1) An person commits an indictable offence (which is triable summarily) if he or she —

(a) unlawfully and indecently assaults another person; or

(b) procures another person, without the person's consent —

(i) to commit an act of gross indecency; or

(ii) to witness an act of gross indecency by the person or any other person.

Penalty — Imprisonment for 10 years.

(2) The offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in sub-section (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.

(3) further, the offender is liable to a maximum penalty of life imprisonment if—

(a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or

(b) for an offence defined in sub-section (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or

(c) for an offence defined in sub-section (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.

5. Therefore, sexual assaults fall under section 210 (1) carries a maximum punishment of imprisonment for 10 years. Sexual Assaults fall under section 210 (2) carries a maximum punishment of imprisonment for 14 years. Sexual Assaults fall under section 210(3) carries a maximum punishment of imprisonment for life.
6. In case of **State v. Laca** (2012) FJHC1414 (14 November 2012), where the accused was charged under section 210 (1), Hon. Justice Madigan taking into consideration the maximum prescribed punishment as 10 years and referring to case of **Abdul Khaiyum** HAC 160 of 2010 said that range of sentences should be 2 to 8 years. There is no tariff set in Fiji for the offences of sexual assault mentioned in the sections 210 (2) and 210 (3) of the Crimes Decree,
7. Hence, I propose the following tariff for the offences of sexual assaults defined in section 210 of the Crimes Decree.

For offences defined in section 210 (1) to be 2 – 8 years.

For offences defined in section 210 (2) to be 5 – 10 years.

For offences defined in section 210 (3) to be 7 – 16 years.

8. In the instant case you touched the complainant's buttocks after lowering her pants and undergarment. Hence, the offence falls under the category 1 above which comes under section 210 (1).

The aggravating factors

9. The complainant was your niece. Therefore it's a gross breach of trust. You took advantage of the vulnerable situation when she was sleeping at your house.

The mitigating factors

10. You pleaded guilty to the charge at your earliest opportunity. You cooperated with the police in their investigation. You are a first offender and you are remorseful. All your personal circumstances submitted on your behalf are also taken into consideration.
11. I take 3 years as the starting point. I add 3 years for the aggravating factors and deduct 1 year for the mitigating factors. I further deduct 18 months for your early guilty plea.
12. Now your sentence is 3 years and 6 months. Your non-parole period will be 2 years and 6 months.
13. You have been in remand for this case for about 1 year and 6 months.

14. Therefore, after deducting that 1 year and 6 months as a period you have already served, the balance term you have to serve is 2 years. Your non-parole period will be 1 year.


Priyantha Fernando
Judge

At Suva

28th November 2016

Solicitors

Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for Accused

