

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 19 of 2015

STATE

V

DAVID JOSIAH BROWN

Counsel: Ms. A. Vavadakua for State
Accused in Person

Date of Conviction : 10 May 2016
Date of Sentence : 11 May 2016

SENTENCE

- [1] After trial in this Court the accused has been convicted of one count of indecent assault, one count of sexual assault, two counts of rape and one count of representative rape.
- [2] The representative count of rape will be sentenced as one rape.
- [3] The facts of the case are that the accused is the father of the complainant. At the time of the indecent assault she was six years old and 10 years old at the time of the sexual assault. When raped in 2012 she was 11, when raped in 2013 she was 11 or 12 and when raped in 2014 she was 12 or 13.

- [4] The complainant Ana (not her real name) had for most of her life lived with her maternal grandparents while her parents and her 3 brothers lived separately in various locations. In the school holidays she would visit and stay with her parents wherever they were living and it was on these occasions that the offences took place.
- [5] In 2008 the accused removed her clothes and touched her breasts and genitals.
- [6] In 2012 he did the same but in this year he had full sexual intercourse with her.
- [7] In 2013 during stays the accused raped his daughter repeatedly and sometimes as much as three times a day every day. The accused took advantage of the fact that Ana's mother worked long hours from before dawn until evening and was hardly ever at home. He would send the boys outside so that the two of them were alone.
- [8] In the school holidays of 2014 he again raped her.
- [9] She was overwhelmed by her father's authority and anger if she tried to protest. At one stage he told her that he would kill her if she told anybody what was happening.
- [10] She eventually told an aunt about the abuse and the Police were informed.
- [11] When advised what a plea in mitigation is and its purpose, the accused told the Court that he is now 34, a farmer and a labourer and a sometimes diver for shellfish.

- [12] Despite these three “careers” it appeared to the Court that he was always at home while the wife worked long hours.
- [13] He has 3 sons and the complainant daughter from his marriage of 16 years.
- [14] He has a clear record (confirmed) and has spent 12 months in custody awaiting trial.
- [15] He told the Court that he “didn’t do it” even after conviction which displayed a distinct lack of remorse.
- [16] His wife is sickly and she needs help to care for the three boys.

Aggravating features

- [17] The most obvious aggravating feature is the utter breach of trust and betrayal of a father-daughter relationship. A father should be in the position of directing his child in her progress to maturity and by constantly sexually assaulting her, her progress is irretrievably impeded.
- [18] It is also aggravating that she should be assaulted in the continual absence of her mother and brothers, left alone to the whims of this sexual savage.
- [19] The well-established tariff for rapes of juveniles is 10-16 years imprisonment (**Anand Abhay Raj** CAV003 of 2012) and I take a starting point of 10 years imprisonment. For the appalling aggravating features of breach of parental trust, I add to that starting point a term of 7 years imprisonment. There is really no mitigation available to the accused. He lacks remorse and his concern for his 3 boys is risible in the light of his treatment of

his one daughter. For his clear record I deduct 1 year. For the time spent in remand I deduct a further year.

- [20] The accused is sentenced to a term of imprisonment of 15 years. That term will be the sentence for each of the rapes (Counts 3, 4 and 5) and they will be served concurrently with each other.
- [21] The maximum penalty for indecent assault is 12 months imprisonment and the assault being on a 6 year old daughter I sentence him to the maximum of 12 months. This term will also be served concurrently with the other terms.
- [22] The maximum penalty for sexual assault is 10 years imprisonment. This Court in Laca HAC 252 of 2011 set a tariff band for this offence to be between 2 to 8 years, at the same time defining different categories of offending.
- [23] The assault on this child is within the most serious category and for that I take a starting point of 8 years. I discount that sentence by one year to reflect his clear record and pass a sentence for this offence of 7 years imprisonment. This sentence will also will be served concurrently with all other offences.
- [24] In summary the accused is sentenced as follows:

Count 1: (Indecent Assault) Twelve months imprisonment

Count 2: (Sexual Assault) 7 years imprisonment

Count 3: (Rape) 15 years imprisonment

Count 4: (Representative Rape) 15 years imprisonment

Count 5: (Rape) 15 years imprisonment.

[25] All sentences to be served concurrently. He shall serve a minimum term of 12 years imprisonment before being eligible for parole.



P. K. Madigan
Judge



At Labasa

11 May 2016