

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 47 OF 2011

STATE

-v-

ANANAIASA SORO

Counsel : Mr. S. Babitu for the State  
Ms. V. Narara for the Accused

Date of Judgment: 02<sup>nd</sup> May, 2016

Date of Sentence 12<sup>th</sup> May, 2016

*(Name of the victim is suppressed. She is referred to as MB)*

**SENTENCE**

[1]. On the 2<sup>nd</sup> of May, 2016, Mr. ANANAIASA SORO (Accused) was convicted after trial on the following count. He comes before this Court for sentence.

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

ANANAIASA SORO on the 15<sup>th</sup> day of December 2010 at Lautoka in the Western Division had carnal knowledge of MB without her consent.

[2]. Victim was 14 years old and attending primary school at the time of the incident. Accused is her cousin from her father's side. Victim's parents are separated. She was living with her step mother who is also the mother-in-law of the accused. On 15<sup>th</sup>

December, 2010, she went to accused's house to watch a movie. After watching the movie, she slept in the sitting room with accused's two children and nephew. Whilst sleeping, accused came and asked her to wake up. Then he closed her mouth and asked her not to shout. Then he removed her shorts and put his penis into her vagina. She was trying to move but could not. Blood was coming out. She was in pain. He told her that if she tells somebody else, he will commit suicide. After the incident, she could not sleep the whole night. She did not inform anyone about this because she was scared. The incident came to light when her step mother questioned her after some time. The matter was then reported to police. Victim developed consistent headaches, stomachaches and drowsiness. There were changes in her body and her physical routines.

- [3]. Maximum penalty for Rape is life imprisonment.
- [4]. It is now well settled, and confirmed by the Supreme Court in Anand Abhay Raj CAV003.2014 that the tariff for rape of a juvenile is 10-16 years' imprisonment.
- [5]. In Raj (*supra*), the appellant sought leave to appeal against a sentence of 16 years with a non-parole period of 12 years for the offence of 'Rape' of his step-daughter. In dismissing the application (unanimously), the Justice Madigan stated the following at paragraph [18]:
- "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".*
- [6]. Supreme Court upheld the judgment of the Court of Appeal, and at paragraph [66] the Chief Justice Anthony Gates endorsed the remarks of the Justice Madigan mentioned above.

### **Starting Point**

- [7]. Rape is a serious crime. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on such offenders. In State v Tauvoli [2011] FJHC 216; HAC027.2011 (18 April 2011) Madigan J observed:

*"Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has 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".*

- [8]. In *State v AV* [2009] FJHC 24; HAC 192 21.02.2009 it was stated that:
- “rape is the most serious form of sexual assault.... Society cannot condone any form of sexual assault on children...Sexual offenders”*
- [9]. Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.
- [10]. In the case of *Mohammed Kasim v State* [1994] FJCA 25; AAU 0021j.93S (27 May 1994) it was stated that;
- “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”.*
- [11]. In *Raj* (*supra*), the accused was the step father of the victim and their age difference was approximately 28 years. The victim was subjected to rape on four occasions over a period of just over 1 year. Victim was 10 years old at the time of the first offending. The Learned Sentencing Judge had selected a starting point of 12 years for each of the 4 representative counts.
- [12]. The circumstances of offending in the present case are slightly different from those in *Raj* (*supra*). In this case the victim was 14 years and the age difference between the two here was approximately 14 years. He committed the offence only once on his cousin. There is no evidence of preplanning.
- [13]. Having considered the gravity of the offence, culpability of the offending and its impact on the victim, I pick eleven (11) years as the starting point.

#### **Aggravating Circumstances**

- [14]. Victim is from a broken family. Accused was aware of the vulnerable situation of the victim. He exploited her vulnerability.
- [15]. The Accused is an elderly cousin of the victim. She visited his house to watch a movie and slept with his children. He breached the trust reposed in him.
- [16]. Accused used his authority over the victim and used violence to instill fear in her. He also frightened her to prevent the incident being reported to anybody. Raping a cousin is no doubt a domestic violence under the Domestic violence Decree.
- [17]. According to the Victim Impact Statement and filed, victim has suffered physically and psychologically. She was depressed and could not concentrate. She lost her virginity at a young age. Offending left a scar and trauma for the rest of her life.

[18]. The accused did not show genuine remorse by not admitting the offence. He did not save the complainant from giving evidence of sexual nature which would have been a distasteful experience for her.

#### **Mitigating Circumstances**

[19]. Accused cooperated with police. According to the mitigation submission, he is 35 years old sole bread winner of his family with seven children. He earns \$ 50 per week as a farmer.

[20]. He seeks forgiveness of the Court and the victim's family.

[21]. He has twice been sentenced in illicit drug cases. However, he has not been convicted in sexual offences. He deserves a discount on his good character.

#### **Sentence**

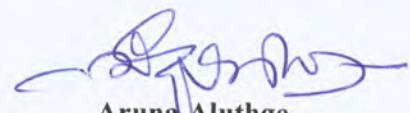
[22]. I add four years to the above stated starting point for aggravating factors bringing the interim sentence to fifteen years' imprisonment. I deduct three years for mitigating factors bringing his sentence down to twelve years' imprisonment.

[23]. According to the report filed by the State, Accused had spent nearly thirteen months in remand. Having considered the time he spent in remand, period of twelve months is deducted from his sentence pursuant to Section 24 of the Sentencing and Penalties Decree. Now his final sentence is eleven years imprisonment.

[24]. Considering Section 18 (1) of the Sentencing and Penalties Decree, his youth, number of children he is having and his willingness to rehabilitate, I impose a non-parole period of eight years.

[25]. 30 days to appeal to the Fiji Court of Appeal.



  
**Aruna Aluthge**  
**Judge**

**At Lautoka**  
**12<sup>th</sup> May, 2016**

#### **Counsel:**

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