

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 112 OF 2013

BETWEEN : STATE

AND : PECELI TAUBULA SENIBUA

Counsel : Ms. J. Fatiaki for State
Ms. Ratu for the Accused

Date of Hearing : 31st of May - 1st of June 2016

Date of Closing Submissions : 1st of June 2016

Date of Summing Up : 2nd of June 2016

Date of Judgment : 6th of June 2016

Date of Sentence : 7th of June 2016

SENTENCE

1. Mr. Peceli Taubula Senibua, you have been convicted by this court for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Decree, which carries a maximum sentence of life imprisonment.
2. It was proved during the hearing that you came to the victim, while she was weeding at the cassava plantation on the morning of 15th of May 2013. You then punched on her face and squeezed her hand. You grabbed the cane knife that she

was holding in her hand. You then punched on her thighs. She fell down on the ground. You threatened her that you will chop her neck if she shouted. You then tore her skirt and removed her undergarment. Having done such, you inserted your penis into her vagina and had a sexual intercourse. She could not shout as she was threatened by you. It lasted for about two to three minutes. You then got up and walked away. She then went to the nearby creek and cleaned herself. She went home and told her mother what you have done to her. Her grandfather then called the police and reported the matter. She was medical examined on the same day at the Sigatoka hospital.

3. Rape is a worse form of sexual assault, which infringed the life of the victim, both physically and psychologically. Such physical and psychological impact on a teenage young girl could have, changed not only her life forever but also the members of her family. The victim was seventeen years old at the time of this offence was committed on her. Sexual Assaults of this nature on young adolescent girls will adversely interfere in their biological development and social maturity, causing perilous social consequences.
4. Having considered the serious nature of this offence, I now turn my attention to consider the purpose of this sentence. The sexual violence and assault on the female, especially young and adolescent girls is a growing concern of the society. Accordingly, the main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature.

5. Hon. Chief Justice Gates in Anand Abhay Raj v State [2014] FJSC 12: CAV0003.2014 (20 August 2014) held that the tariff for rape of a child is between 10 -16 years' imprisonment period.
6. The victim impact report states that the victim is still suffering from the memories of this sinister incident. You have inflicted substantial violence on her before you commit this crime. Moreover, you have threatened her with a cane knife that you will chop her neck if she shouted. In view of the seriousness of the offence and the level of harm and culpability as discussed above, I select twelve (12) years as the starting point for this offence.
7. It was proved during the hearing that you knew that she was going to the farm alone. Knowing that she was alone at the farm, you came behind and assaulted her when she could not protect herself. Hence, it appears that this is an opportunistic act of crime. You were thirty-two (32) years old at that time and related to her. You were nearly fifteen years older than the victim. You stated in your evidence that you treated her as your granddaughter. By committing this crime on the victim, you have breached the trust that she had for you as an elderly relative of her. I consider these factors as aggravating circumstances.
8. You are 35 years old. The learned counsel for the accused person submitted in your mitigation that you are the sole breadwinner of your family. You are a first offender. I consider these facts as mitigatory factors in your favour.
9. In view of the above discussed aggravating circumstances, I increased three (3) year in order to reach fifteen (15) years of interim imprisonment period. Having

considered the mitigating factors, I reduce two (2) years. Your sentence is now thirteen (13) years of imprisonment.

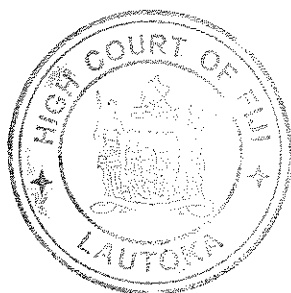
10. You have spent three months in remand custody prior to the commencement of the hearing. I accordingly reduce further three (3) months, making your final sentence as twelve (12) years and nine (9) months of imprisonment period.
11. Having considered your age and your unblemished previous good character, I find ten (10) years of non-parole period would appropriately serve the purpose of deterrence and the opportunity to rehabilitate.
12. Accordingly, I sentence you for a period of twelve (12) years and nine (9) months of imprisonment for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Degree. Furthermore, I order that you are not eligible for parole for a period of ten (10) years.
13. Thirty (30) days to appeal to the Fiji Court of Appeal.



R. D. R. Thushara Rajasinghe

Judge

**At Lautoka
7th of June 2016**



**Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission**