

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 196 OF 2013

STATE

-v-

SERUVI RALIVANAWA

Counsel: **Ms. Naibe with Mr. Babitu for the State**

Mr. Fesaitu for the Accused

Date of Judgment : **30th May, 2016**

Date of Sentence : **13th June, 2016**

SENTENCE

- [1] On the 30th of May, 2016, Mr. **SERUVI RALIVANAWA** was convicted on the following count after trial.

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

SERUVI RALIVANAWA between the 1st of June, 2013 and 30th of June, 2013 at Lautoka in the Western Division, inserted his penis into the vagina of **KELERAYANI DRODRO**, without the consent of the said **KELERAYANI DRODRO**.

- [2] Facts of the case were that: Mr. Seruvi was 26 years old at the time of offending. He is closely related to the victim who was only 17 years old at the time of the offence. He visited the victim during night when her mother was away. He tricked her to open the door saying that her mom was at his place and she was calling her. Believing him, she opened the door. When she came out, he took her beside the house. Then he tied her tightly and blocked her mouth when she tried to scream. He inserted his penis into her vagina. She became unconscious. When she regained consciousness he told her to go back and sleep. She felt tired. Blood was coming out. She did not inform anyone about this because she was scared. The incident came to light when her mother noticed she was four month pregnant. The matter was then reported to police.
- [3]. Mr. SERUVI RALIVANAWA now comes before this Court for sentence after conviction.
- [4]. Maximum penalty for Rape is life imprisonment.
- [6]. 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.
- [7]. 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".*
- [8]. 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

- [9]. Rape is a serious crime. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on rapists. 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”.

[10]. 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”

[11]. 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.

[12]. 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”.

[13]. 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.

[14]. The circumstances of offending in the present case are slightly different from those in *Raj* (*supra*). In this case the victim was 17 years and the age difference between the two here was approximately 10 years. He committed the offence only once on his close relative.

[15]. 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

[16]. Mr. Seruvi was aware of the vulnerable situation of the victim when her mother was away. This is clearly a premeditated attack. He exploited her vulnerability.

[17]. Mr. Seruvi is closely related to the victim. He visited her house in night and tricked her to open the door. He breached the trust reposed in him.

[18]. Mr. Seruvi used his authority over the victim and used violence to instill fear in her.

[19]. Victim lost her virginity and became pregnant at a young age. Offending left a scar and trauma for the rest of her life.

[20]. Mr. Seruvi 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

[21]. Mr. Seruvi cooperated with police. According to the mitigation submission, he is 30 years old sole bread winner of his family and supports his elderly parents. He earns \$ 180 per week as an activity assistant in a resort.

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

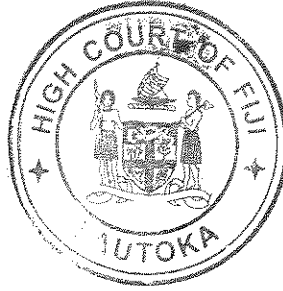
[23]. He is a first offender. He deserves a discount on his good character.

Sentence

[24]. I add three years to the above stated starting point for aggravating factors bringing the interim sentence to fourteen years' imprisonment. I deduct three years for mitigating factors bringing his sentence down to eleven years' imprisonment.

[25]. According to the report filed by the State, Mr. Seruvi had spent nearly two months in remand. Having considered the time he spent in remand, period of two months is deducted from his sentence pursuant to Section 24 of the Sentencing and Penalties Decree. Now his final sentence is ten years and ten months' imprisonment.

- [26]. Considering Section 18 (1) of the Sentencing and Penalties Decree, his youth, and his willingness to rehabilitate, I impose a non-parole period of eight years.
- [27]. 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge
Judge

At Lautoka
13th June, 2016

Counsel:

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