

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 88 OF 2013

BETWEEN : STATE

AND : AMINIASI MASEI

Counsel : Mr. S. Babitu for State
Miss. S. Nasedra for the Accused

Date of Hearing : 12th of July 2016

Date of Closing Submissions : 13th of July 2016

Date of Summing Up : 14th of July 2016

Date of Judgment : 15th of July 2016

Date of Sentence : 19th of July 2016

SENTENCE

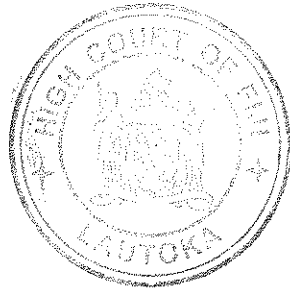
1. The name of the victim is suppressed.
2. Mr. Aminiasi Masei, you have been found guilty and convicted for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Decree, which carries a maximum penalty of life imprisonment.


3. It was proved at the conclusion of the hearing that you pulled the victim into the sugar cane field, while he was walking back after the nature's call. The victim had gone into the sugar cane field for nature's call. You then asked the victim to remove his pants. You then inserted your penis into the anus of the victim without his consent. The victim was fifteen years old at that time.
4. Rape of children is undoubtedly a very serious crime, which adversely affects the victim's life, physically and emotionally. The legislators have enacted harsh penalties for offences of this nature. The court in sentencing must adopt strong deterrence approach in order to demonstrate that the civilised society has no remorse or sympathy for the offenders of such crimes. 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. It was proved at the hearing that the victim had suffered some psychological disturbance in the aftermath of this incident. He had sleeping problems as this incident regularly came to his mind. It was further proved that you have employed some amount of force to pull the victim into the sugar cane field by his collar. You then forced the victim to remove his pants. Having considered the level of harm and culpability of this offence, I select eleven (11) years of imprisonment period as a starting point.

7. You were thirty-three (33) years old and the victim was fifteen (15) years old at the time of this offence was committed. The age gap between you and the victim was nearly eighteen (18) years. It is a social and moral responsibility of a person at your age to look after the safety and wellbeing of children with care and affection. However, you chose otherwise to use your position as an elderly man to abuse them in order to fulfill your lustful sexual gratification in a disgraceful manner. When you saw the victim was walking alone in the sugar cane field, you found an opportunity to unleash your lustful sexual gratification. Hence, I find this as an opportunistic crime. I consider these facts as aggravating circumstances of this crime.
8. It was submitted in mitigation, that you are 36 years old and looking after your elderly father. You are a first offender. You have spent two months in prison prior to this sentencing. I consider these facts as mitigating factor in your favour.
9. Having considered the aggravating factors which discussed above, I increase three (3) years to reach interim period of fourteen (14) years of imprisonment. I reduce two (2) years for the mitigating factors and the time you have spent in prison prior to the sentencing, making the final sentence as twelve (12) years of imprisonment.
10. Having considered your age and unblemished record of your previous behavior, it is my view that the court must consider the possibilities of rehabilitation, while preserving the main sentencing purpose of deterrence and protection of community. I accordingly find nine (9) years of non-parole period would serve both the purposes of deference and rehabilitation.

11. Accordingly, I sentence you for a period of twelve years (12) 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 nine (9) years.

12. Thirty (30) days to appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
19th of July 2016

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