

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 090 OF 2013

BETWEEN : STATE

AND : HARRY MOSES LILO

Counsel : Mr. J. Niudamu for State
Ms. J. Singh for the Accused

Date of Hearing : 1st and 2nd of August 2016

Date of Closing Submissions : 3rd of August 2016

Date of Summing Up : 4th of August 2016

Date of Judgment : 4th of August 2016

Date of Sentence : 5th of August 2016

SENTENCE

1. Mr. Harry Moses Lilo, you are found guilty and 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 at the conclusion of this hearing, that you came home in the early morning around 2a.m. on one Saturday in October 2012 and forcefully had sexual intercourse with the victim without her consent. You came home after drinking grog in the village. When you knocked the door of the kitchen, the victim came and opened the door for you. You then forcefully held her hand and

elbowed on her ribs to make her bend down. You then removed her undergarment and forcefully inserted your penis into her vagina without her consent. She is your step-daughter. You are the de-facto partner of her mother. The victim at that time was fourteen years old and attending High School in Form three.

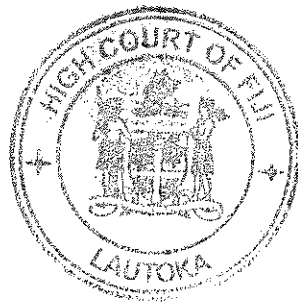
3. This is a case of raping a child at the age of fourteen years by a known person within her own domestic environment. In your evidence you stated that you and your de-facto partner considered the victim as one of your own children and did not differentiate her from your own three children. The victim considered you, the step father, her biological mother and three step-siblings as her family. The family is the most protective and appropriate environment for a child to grow up with confidence and safety. Close family members are the most trusted and dependable people surrounded during the developmental stages of a child. Therefore, sexually assaulting a child within her own family environment by a known family member is one of the outrageous forms of sexual crime.
4. In view of the seriousness of the offences of rape of this nature, it is my opinion that such offenders must be dealt with severe and harsh punishment. Hence, the purpose of this sentence is founded on the principle of deterrence and protection of community. Moreover, the court must demonstrate in sentencing that the offenders of this nature are socially abhorrent.
5. Hon. Chief Justice Gates in Anand Abhay Raj vs 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. In consequence of this crime, the victim became pregnant. She being the step-daughter, was living under your authority. Her own parents have been separated. The victim's relationship with her own mother was distant. The victim's father was not living with her. It was revealed that the victim was not in good terms with her biological father during the period material to this case. Hence, it appears that she was a vulnerable child due to her personal circumstances. In view of these factors, I find the level of harm caused by you on the victim is very high.
7. You have unleashed this disgraceful sexual exploitation on the victim when she was not in a position to seek any assistance or find a way to escape. She was in the kitchen, who came to open the door for you. Her mother was fast asleep in the sitting room as she came home after work in the night. Hence, it appears that you found an opportunity, where the victim was more vulnerable without any prospects of escaping, in order to satisfy your heinous lustful sexual gratification. Hence, I find the decree of culpability in this offending is substantially high.
8. The victim states in the Victim Impact Report filed by the prosecution that this crime caused adverse emotional and psychological effects on her life. However, I do not wish to give much weight on this report as it has not been prepared by an expert on this field after proper evaluation.
9. Having considered the seriousness of the offence, the purpose of the sentencing, the level of harm and the decree of culpability, it is appropriate to select the starting point from the middle range of the tariff limit. I accordingly select thirteen (13) years as the starting point.

10. You have blatantly breached the trust reposed in you by the victim as her step-father. By committing this crime on the victim, you denied her childhood and the natural growth of her life. You have employed some form of verbal force on the victim in order to conceal this crime from the society. Being the step-father, it was your duty and responsibility to provide the victim necessary protection and care with love and affection. By committing this crime, you have ignored to fulfill such duties and responsibilities. The age difference between you and the victim was about 26 year at the time of this crime took place. I consider these factors as aggravating circumstance of this crime.
11. The learned counsel for the defence submitted in mitigation about your family circumstances in detail. You have three children. You are the sole breadwinner of your family. However, the family background of the offenders of this nature has very minimal mitigatory value.
12. According to the report of your previous conviction, you have been convicted for an offence of larceny in 1990. Since then, you have a clear record of good character. Therefore, it is appropriate to give you some substantial discount for your good character. You have spent nearly three months in remand custody prior to the hearing of this case. Therefore, you are entitled for a discount for the said period in remand custody pursuant to Section 24 of the Sentencing and Penalties Decree. I consider these factors as mitigating factors in your favour.
13. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of sixteen (16) years. I reduce two (2) years for the mitigating factors I discussed above. Your final sentence has now reached to fourteen (14) years of imprisonment.

14. Having considered your age and previous character, it is my view that thirteen (13) years of non-parole period would sufficiently serve the purpose of deterrence while providing an opportunity for rehabilitation.
15. I accordingly sentence you for a period of fourteen (14) of imprisonment for the offence of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. Furthermore, You are not entitled for any parole for a period of thirteen (13) years.
16. Thirty (30) days to appeal to the Fiji Court of Appeal.

At Lautoka
5th of August 2016




R. D. R. Thushara Rajasinghe
Judge

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