

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 378 OF 2013

STATE

VS

WAISAKE VUETI

Counsel : **Ms. S. Serukai for the State**
: **Trial in Absentia. No Appearance**

Summing Up : **22nd September 2016**

Judgment : **23rd September 2016**

Sentence : **27th September 2016**

SENTENCE

- [1] The accused, **WAISAKE VUETI**, after being convicted on two counts of Rape, contrary to Sections 207(1), (2)(a) and (3) of the Crimes Decree No. 44 of 2009, is to be sentenced by this Court.
- [2] The trial proceeded in the absence of the accused. His trial lasted for three days in this Court; during which, the complainant and three Police officers, who were involved with the investigation and recording of the caution interview statement of the accused, have given evidence for the prosecution.

[3] At the conclusion of trial; having reviewed the evidence and its summing up to assessors, this Court decided to accept their unanimous opinion and found the accused guilty and convicted him to the two counts of Rape.

[4] The following facts were proved during the trial:

(i) *The 12 year old complainant was living with her family and the accused also lived with them for three weeks prior to the incident. On the morning of 28th August 2013, she was at home with her brother Epeli and the accused. They were watching a movie. Then the accused, having shut Epeli in a room, had penetrated the complainant's vagina with his penis, after calling her into another room.*

(ii) *On the following morning, the accused took the complainant away from the house to break breadfruit. Then he called her into a vacant house and in its bathroom, penetrated the complainant's vagina with his penis. He threatened her with death if she revealed about it to her aunt.*

(iii) *In his caution statement, marked by the prosecution during the trial, the accused made certain admissions on relevant matters to this case.*

[5] According to Section 207(1) of the Crimes Decree No. 44 of 2009, the maximum punishment for Rape is imprisonment for life. It is a serious offence.

[6] The complainant was 12 years of age at the time of the Rape and therefore, is a juvenile. The tariff for Rape of a juvenile is confirmed in the Judgment of Chief Justice Gates in **Raj v State** [2014] FJSC 12. The starting point of imprisonment for Rape of a juvenile is 10 years. The tariff is between 10 years to 16 years.

[7] In **Mohammed Kasim v The State** (unreported) Cr. Case No. 14 of 1993; of 27 May 1994, the Court of Appeal observed thus:

"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."

[8] In determining the starting point within the said tariff, Goundar J, in **Koroivuki v State** [2013] FJCA 15 has formulated the following guiding principles;

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

[9] Considering the nature of offending, and in the light of the above guiding principles, I commence the sentence of the accused at 12 years of imprisonment for each count of Rape.

[10] The aggravating factors are:

- (i) *Breach of trust the victim had towards the accused as he was also living with her;*
- (ii) *Significant degree of opportunistic planning;*
- (iii) *Taking advantage of the victim's vulnerability;*
- (iv) *Display of total disregard to the victim's wellbeing.*

[11] I add 3 years on the sentence of the accused for above aggravating factors. Now his sentence is 15 years for each count.

[12] The case record does not reveal any mitigating factors in favour of the accused. His statement reveals the personal circumstances, but they are not relevant in mitigation.

[13] In view of the provisions contained in Section 24 of the Sentencing and Penalties Decree 2009, I deduct his one month long remand period from the sentence and now the sentence to serve is 14 years and 11 months on each count. These two terms of imprisonments are to run concurrently.

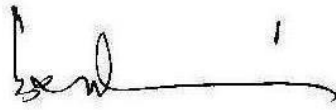
[14] Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 12 years and 11 months of non-parole period in view of the judgement of Court of Appeal in **Paula Tora v The State** [2015] FJCA 20 and was endorsed by the Supreme Court in **Paula Tora v The State** [2015] FJSC 23.

Summary

[15] The final sentence of the accused is therefore as follows:

- (i) *For the 1st count of Rape – 14 years and 11 months of imprisonment.*
- (ii) *For the 2nd count of Rape – 14 years and 11 months of imprisonment.*
- (iii) *These two terms of imprisonments are to run concurrently.*
- (iv) *Non-parole period - 12 years and 11 months.*

[16] The accused may appeal to the Court of Appeal within 30 days.



ACHALA WENGAPPULI
JUDGE



At Suva

This 27th Day of September 2016

Solicitor for the State* : *Office of the Director of Public Prosecution, Suva
Solicitor for the Accused* : *Trial in Absentia. No Appearance