

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 61 OF 2015

STATE

-v-

APOROSA NACEWA

Counsel : Ms. S. Kiran for State
Mr. E. Sailo for Accused

Date of Judgment : 5th December, 2017
Date of Sentence : 13th December, 2017

(Name of the Complainant is suppressed. She is referred to as KB)

SENTENCE

1. Mr. Aporosa Nacewa, you were convicted on one representative count of Rape after a fully defended trial. You were convicted on following Information:

Statement of Offence

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

Particulars of Offence

APOROSA NACEWA, between the 1st day of January 2014 and 31st day of December 2014 at Nadi in the Western Division, penetrated the vagina of KB with his penis without the consent of the said KB.

2. You now come before this Court for sentence.
3. The victim, KB, 17 years old, was living with her grandparents in Nawaka. She was attending Nadi Special School because she was mentally and

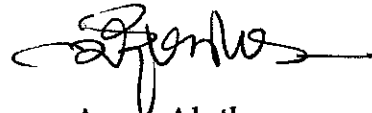
physically impaired. You are related to her as her uncle. In 2014, you went to victim's house when she was alone and asked for the *dari* or grog bowl.

4. When victim was trying to get the bowl from underneath the bed, you closed the house, then undressed her and put your penis into her vagina without her consent.
5. In the same year, victim visited your sisters who were her good friends. When victim went inside the house to drink water, you pulled her hand and inserted your penis into her vagina without her consent.
6. Again in the same year, the victim was attending a funeral in Nausori Highlands. When victim came to see your sisters, you pulled her and took her to your room and inserted your penis into her vagina without her consent.
7. The maximum punishment for Rape is imprisonment for life.
8. Victim was 17 years of age at the time of the offending and therefore, is a juvenile. The tariff for rape of a juvenile was confirmed by the Chief Justice Gates in *Raj v State* [2014] FJSC 12. The starting point of imprisonment for rape of a juvenile is 10 years and the tariff is between 10 and 16 years.
9. Rape is a serious offence. By prescribing life imprisonment for Rape, the law makers expect courts to impose harsher punishment on rape offenders. Rape of children is very prevalent in Fiji. Courts and the society cannot condone any form of sexual assault on children. Furthermore, victim is a mentally challenged person. Courts and society must ensure that disabled persons are specifically protected. Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear message to the society. The offender must be severely punished and be incarcerated to ensure that young and vulnerable persons in our society are safe and secure.
10. The main purpose of your sentence is special and general deterrence and denunciation. However, I am mindful of your chances of rehabilitation.
11. You used a young and mentally challenged child to satisfy your lustful demands; the offending is very serious. However, you did not inflict any physical harm or force on to the victim to make her submit to the unlawful acts.
12. As per principles enunciated in *Laisiasa Koroivuki v State* (Criminal Appeal AAU 0018 of 2010) the starting point should be picked from the lower or middle range of the tariff. Having considered the objective seriousness of the

offence and the harm caused to the young victim, I pick 11 years' imprisonment as the starting point.

13. Then I take into consideration the aggravating and mitigating factors for your sentence.
14. It is highly aggravating that you breached the trust as her uncle. You knew very well that victim was mentally impaired. Victim is from a broken family and was living with her grandparents. You exploited her vulnerability. Age gap between you and victim is considerably high. You completely disregarded victim's safety and wellbeing. I add three years on your sentence for above aggravating factors. Now your sentence is 14 years.
15. Your Counsel has filed mitigation and begged for mercy and forgiveness. You are 37 year old employee at Naravu Corporative Limited and you support your elderly parents. You have cooperated with police and court. Prior to this, you had never been convicted for an offence. You have maintained a clear record thus far. The character certificates filed on your behalf indicate that you are a person of good character until you fell from grace with the commission of this offence. You now admit your wrongdoing and repent about the careless and wrong decision you have made. However you are already late. At this stage, I am not inclined to consider your repentance as a true indication of remorse because you maintained the not guilty plea right throughout the trial and made the innocent victim give evidence. I deduct two years for all mitigating circumstances bringing the sentence down to one of 12 years.
16. According to the submission filed by the State you have spent 2 months in remand. I further deduct 2 months for the remand period. Now your final sentence is 11 years and 10 months imprisonment.
17. In fixing an appropriate non-parole period, I considered your prospects for rehabilitation as a young and first offender. I should be guided by observations made by the Supreme Court in *Tora v State* [2015] FJSC23, where it was observed that "*the non-parole term should not be so close to the head sentence as to deny or discourage the possibility of rehabilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent.*"
18. Considering Section 18 (1) of the Sentencing and Penalties Act and in view of the observations of the Supreme Court in *Tora v State* (supra), a balance had to be maintained between your prospects of rehabilitation and deterrence. I impose a non-parole period of 9 years.

19. Your final sentence is as follows:
You are sentenced to 11 years and 10 months imprisonment. You are not eligible for parole until you complete serving 9 years' imprisonment.
20. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge

Judge

AT LAUTOKA

13th December, 2017

Solicitor: Office of the Director of Public Prosecution for State

KLAW Chambers & partners for Accused