

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 159 of 2017

STATE

v.

APISAI RAKAVONO

Counsel: Ms. S Serukai for State
Mr. F. Vosarogo for Respondent

Date of Hearing: 12th to 14th March 2018

Date of Summing Up: 15th March 2018

Date of Judgment: 16th March 2018

Date of Sentence: 20th March 2018

SENTENCE

Introduction & Background

1. The name of the Complainant is suppressed.
2. The Accused is found guilty and convicted for one count of Rape, contrary to Section 207 (1), (2) (a) and (3) of the Crimes Act, which carries a maximum sentence of life imprisonment.
3. It was proved at the conclusion of the hearing that you took the Complainant, who is your step-daughter and her two siblings to the jungle to collect firewoods on the 6th of May 2017. You then sent the siblings to another direction. Thereafter, you took the Complainant to a place, where you forcefully laid her down on the trunk of a fallen

tree. You then penetrated her vagina with your penis. The Complainant was eleven years old at that time.

Seriousness of the offence

4. Raping of young children by a known family member is one of the worst forms of child abuses. You are the step-father of the Complainant. Young children are the most vulnerable victims of sexual assault of this nature. Such sexual exploitation of children by the family member has become a social menace in this country, which requires a more constructive and affective intervention of the law enforcement authorities, including the Court of Law in order to protect the children from this monsters phenomenon. Therefore, I find this offending is a very serious crime.

Purpose of the Sentence

5. In view of the seriousness of this offence, 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.

Tariff

6. Hon. Chief Justice Gates in Anand Abhay Raj [2014] FJSC 12; CAV0003.2014 (20 August 2014) held that the tariff for rape of a child is between 10 -16 years' imprisonment period.

Starting Point

7. The victim was eleven years old at that time. It is certain that a crime of this nature adversely affects a child of this age, both physiologically and socially. Hence, I find the level of harm is substantially high in this crime.
8. You have executed this shameful crime on the Complainant when she was alone and had no prospect of escaping or seeking help. Hence, it is clear, that you found an

opportunity, where the complainant was vulnerable, in order to execute this crime on the Complainant. I accordingly find the degree of culpability in this offending is substantially high.

9. In view of the seriousness of this crime, and the level of harm and culpability, I select twelve (12) years as the starting point for the offence of Rape.

Aggravating Factors

10. You have blatantly breached the trust reposed in you by the Complainant as her step-father. It is your duty as the step-father, to look after the Complainant with care and love. Instead, you choose to take advantage of her trust and respect, in order to execute your lustful and shameful sexual gratification. The age difference between you and the Complainant was substantially high at the time of this crime took place. By committing this crime, you have denied the natural growth of the Complainant's life. I consider these factors as aggravating circumstances of this crime.

Mitigating Factors

11. You are not a first offender. You have been adversely recorded with six previous convictions. Two of them has been recorded within the last ten years. Therefore, I do not find that you are entitled for any discount for your previous good character.
12. The learned counsel for the defence in his written submissions in mitigation, submitted the personal and family background of you. However, personal and family background of an offender of this nature has minimal mitigatory value. Therefore, I do not find any favourable mitigating grounds.
13. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of fifteen (15) years. As discussed above, I do not find any valid mitigating ground for your favour. Therefore, your final sentence for the Rape is fifteen (15) years of imprisonment.

14. Having considered the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find thirteen (13) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

15. Accordingly, I sentence you for a **period of fifteen (15) years imprisonment** for the offence of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act. Further, I order that you are not eligible for any parole for a period of **thirteen (13) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of The Sentence


16. You have been in remand custody for this case for a period of ten (10) months and five (5) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of one (1) year as a period of imprisonment that have already been served by you.
17. Accordingly, the actual sentencing period is **fourteen (14) years** imprisonment with non-parole period of **twelve (12) years**.

Domestic Violence Restraining Order

18. Since this incident involves with Domestic Violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent domestic violence restraining order against you with standard non-molestation conditions and no contact conditions pursuant to section 24 and 28 of the Domestic Violence Act. The above domestic violence restraining order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of Section 77 of the Domestic Violence Act.

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




R.D.R.T. Rajasinghe
Judge

At Suva
20th March 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Mamlakha lawyers for Defence.