

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 32 OF 2017

STATE

V

IMANUELI SENIKUBA

Counsel : Ms. A. Vavadakua for the State

Ms. S. Devi with Ms. K. Boseiwaqa for the Accused

Hearing on : 03rd September - 05th September 2018
Summing up on : 05th September 2018
Judgment on : 05th September 2018
Sentence on : 06th September 2018

(Name of the complainant is permanently suppressed and will be referred to as SL.)

SENTENCE

1. Imanueli Senikuba, you have been found guilty and convicted of the following offence for which you were charged:

Statement of Offence

RAPE: contrary to section 207(1) and (2) (b) and (3) of the Crimes Act No. 44 of 2009.

Particulars of Offence

Imanueli Senikuba, sometime between 14th day of August 2015 and the 31st day of August 2015, at Vitina Village, in Dogotuki in the Northern Division, penetrated the vulva of SL, a child under the age of 13 years, with his tongue.

2. You pleaded not guilty to the charge and the ensuing trial lasted for 3 days. The complainant *SL*, Amelia the grandmother of *SL*, and a Police Officer, who was involved with the arrest and charge of the accused, have given evidence for the prosecution while you offered evidence in support of your denial of charge.
3. At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found you guilty to the count of Rape. Having reviewed the evidence, this Court decided to accept the unanimous opinion of the Assessors, and found you guilty and convicted you of the said charge.
4. It was proved during the trial that, between the 14th day of August 2015 and the 31st day of August 2015, at Vitina Village in Dogotuki, you penetrated the vulva of *SL*, a child under the age of 13 years, with your tongue.
5. You are an immediate neighbour of the complainant at Vitina Village. The complainant was only 09 years of age, at the time you committed the above offence on her (her date of birth being 21 September 2006), and as such, she was a juvenile.
6. The complainant clearly testified as to how, you penetrated her vulva with your tongue. You were an adult member of the village having grand children in similar age of the *SL*. As you stated in evidence, the child, *SL* called you kuku (grandfather) and used to come to your place to play with your grandchildren. The child *SL* looked to you as a trusted adult and instead, you lured her into your room and raped her. By your shameful act you have robbed the innocence of a 09 year old child.
7. Even though a Victim Impact Assessment Report has not been obtained the Court having observed the child while giving evidence, notes that the child has gone through an immense Psychological trauma. It was apparent that she felt ashamed. The reason for shame was because she had to return to Court and narrate the incident all over again.

8. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.
9. The offence of Rape in terms of Section 207(1) of the Crimes Act No. 44 of 2009 carries a maximum penalty of imprisonment for life.
10. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:
“...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.”
11. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:
“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.
12. In the **State v Lasaro Turagabeci and Others** (supra) Pain J had said:
“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”
13. His Lordship Justice Daniel Goundar, in the case of **State v. AV** [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

"... Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences".

14. In the case of **Anand Abhay Raj v. State** [2014] FJSC 12; CAV 03 of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rape of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.
15. In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v. State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); 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."
16. In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 10 years imprisonment for the count of Rape.
17. The aggravating factors are as follows:
 - (i) You were an immediate neighbour of the complainant. Being so you should have protected her. Instead you have breached the trust expected from you and the breach was gross.

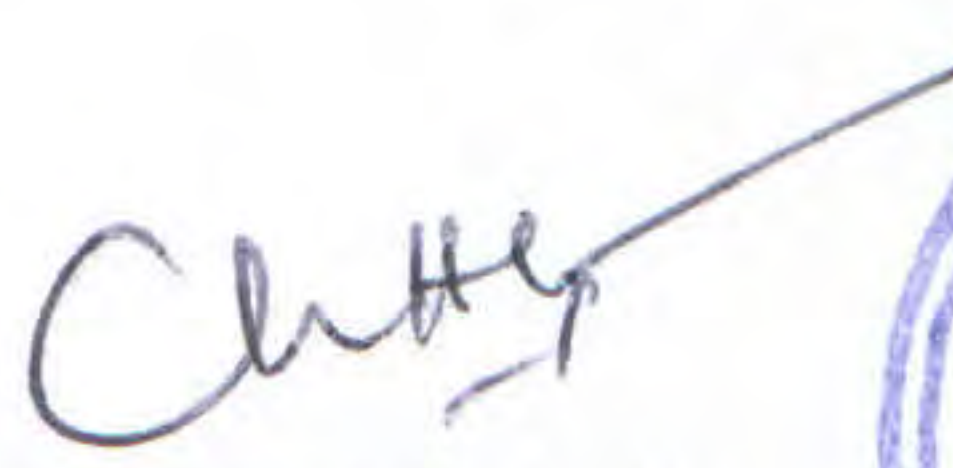
- (ii) There was a large disparity in age between you and the complainant. The complainant was merely 09 years of age at the time you committed the offence on her. At the time you were 61 years old. Therefore, there was a difference in age of 52 years.
 - (iii) You took advantage of the complainant's vulnerability, helplessness and naivety.
 - (iv) You have exposed the innocent mind of a child to sexual activity at such a tender age.
18. Considering the aforementioned aggravating factors, I increase your sentence by a further 3 years. Now your sentence is 13 years imprisonment for the count of Rape.
19. Imanueli Senikuba, you are now 64 years old. You are said to be a farmer and a fisherman. However, these are all personal circumstances and cannot be considered as mitigating circumstances
20. State has indicated that you have no previous convictions or pending cases. Therefore, you are a first offender.
21. In considering that you are a first time offender and the rest of the mitigating factors submitted on your behalf I deduct two years from the above.
22. Accordingly, I sentence you to a term of imprisonment of 11 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 09 years of that sentence.
23. Section 24 of the Sentencing and Penalties Act reads thus:
"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."


24. You have been in remand custody for this case from 26 June 2017 to 13 July 2017, when you were granted bail by the Magistrates' Court. Thereafter, you have been in remand custody since 03rd September 2018, the day on which I commenced the trial in this case. Accordingly, you have been in custody for a period of about 22 days. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 1 month should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

25. In the result, you are sentenced to a term of imprisonment of 11 years with a non-parole period of 09 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 10 years and 11 months.
Non-parole period - 08 years and 11 months.

26. You have 30 days to appeal to the Court of Appeal if you so wish.


Chamath S. Morais
JUDGE



At Labasa

06th September 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.
Solicitors for the Accused : Office of the Legal Aid Commission, Labasa.