

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 124 of 2019

STATE

V

LAISIASA COREREGA

Counsel : Mr. T. Tuenuku for the State.
: Ms. J. Singh for the Accused.

Date of Submissions : 29 June, 2020

Date of Sentence : 30 June, 2020

SENTENCE

(The name of the victim is suppressed she will be referred to as "RK").

1. The accused is charged with the following offences as per the following information filed by the Director of Public Prosecutions dated 3rd September, 2019.

COUNT ONE

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act, 2009.

Particulars of Offence

LAISIASA COREREGA, on the 17th of July, 2019 at Lautoka in the Western Division unlawfully and indecently assaulted “**RK**”, by licking her vagina.

COUNT TWO

Statement of Offence

RAPE: Contrary to section 207 (1), (2) (b) and (3) of the Crimes Act, 2009.

Particulars of Offence

LAISIASA COREREGA, on the 17th of July, 2019 at Lautoka in the Western Division penetrated the vagina of “**RK**”, a child under the age of 13 with his finger.

COUNT THREE

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act, 2009.

Particulars of Offence

LAISIASA COREREGA, on the 17th of July, 2019 at Lautoka in the Western Division on an occasion other than in Count One, unlawfully and indecently assaulted “**RK**”, by licking her vagina.

COUNT FOUR

Statement of Offence

RAPE: Contrary to section 207 (1), (2) (b) and (3) of the Crimes Act, 2009.

Particulars of Offence

LAISIASA COREREGA, on the 17th of July, 2019 at Lautoka in the Western Division penetrated the vagina of “**RK**”, a child under the age of 13 with his finger.

COUNT FIVE

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) of the Crimes Act, 2009.

Particulars of Offence

LAIASIA COREREGA, on the 17th of July, 2019 at Lautoka in the Western Division unlawfully and indecently assaulted “**RK**”, by touching her breast.

COUNT SIX

Statement of Offence

INDECENT ASSAULT: Contrary to section 212 (1) of the Crimes Act, 2009.

Particulars of Offence

LAIASIA COREREGA, on the 17th of July, 2019 at Lautoka in the Western Division unlawfully and indecently assaulted “**ST**”, by pulling down her panty.

2. On 17th February, 2020 the accused pleaded guilty to counts one to five in the presence of his counsel. Thereafter on 15th June, 2020 the summary of facts was explained to the accused in the ITaukei language which he understood and admitted.
3. The brief summary of facts was as follows:

On 17th July, 2019 the victim “**RK**” who was 12 years of age was sleeping at her home with her sister when the accused who was her step father entered the bedroom.

4. In the bedroom the accused removed the victim’s clothes, spread her legs and licked her vagina (count 1). After licking the victim’s vagina for a few minutes the accused poked one his fingers into the vagina of the victim (count 2).
5. The victim felt pain since the accused pushed his finger back and forth in her vagina, thereafter the accused carried the victim from the bedroom into the sitting room after leaving the victim on the mattress he went into the bedroom.

6. After a while the accused came out of the bedroom and laid beside the victim and began touching her left breast (count 5) he then turned the victim around removed her clothes, spread her legs and licked the victim's vagina again (count 3). At this point the accused poked one of his fingers into the vagina of the victim (count 4). The victim felt pain.
7. The matter was reported to the police the next day (18 July, 2019), later the accused was caution interviewed and charged.
8. After considering the summary of facts read by the State Counsel which was admitted by the accused and upon reading his caution interview and the charge statement this court is satisfied that the accused has entered an equivocal plea of guilty on his own freewill.
9. This court is also satisfied that the accused has fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offences the accused is charged with.
10. In view of the above, this court finds the accused guilty and he is convicted for counts one to five being two counts of rape and three counts of sexual assault.
11. Both counsel filed sentence submissions and mitigation for which this court is grateful.
12. The learned counsel for the accused presented the following mitigation and personal details:
 - a) The accused is a first offender;
 - b) Was 36 years at the time of the offending;
 - c) He is separated with two sons;

- d) A block layer by profession;
 - e) Comes from a broken family he was 19 years when his parents separated;
 - f) After the death of his mother the accused was staying with his aunt where he endured lots of hardship;
 - g) Regrets what he has done;
 - h) Promises not to reoffend and is willing to rehabilitate himself.
13. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigating value in cases of sexual nature.

TARIFF

14. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in *Gordon Aitcheson vs. The State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has confirmed that the new tariff for the rape of a juvenile is now a sentence between 11 years to 20 years imprisonment.

AGGRAVATING FACTORS

15. The following aggravating factors are obvious:

a) Breach of Trust

The accused is the step father of the victim who was in the care of the accused. The accused grossly breached the trust of the victim by his actions.

The Supreme Court in *Gordon Aitcheson vs. The State, (supra)* at paragraph 62 of the judgment endorsed the comments of the trial judge as follows:

“...Parents are the only trusted and dependable persons that a child has in her growing tender years. Turning that trusted dependable person into a monstrous demon who penetrated in to the innocent childhood of the child and destroy it with his own lustful sexual satisfaction, would undoubtedly jeopardise the child’s entire future life. Therefore, incest is a rape by extortion, in which a child’s very childhood becomes a weapon used to control her”.

b) Victim was unsuspecting and vulnerable

The victim was 12 years of age at the time of the offending, she was sleeping in her bedroom when the accused entered and also took her into the sitting room. The victim was vulnerable and unsuspecting, the accused took advantage of this.

c) Age Difference

The victim was 12 years of age and the accused was 36 years of age, the age difference is substantial.

d) Planning

The accused had planned what he did, he knew the victim was with her younger sister without any other adult at home and he committed the unlawful acts.

16. Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

17. I am satisfied that the five offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for all the five offences.

18. The Supreme Court in *Mohammed Alfaaz v State* [2018] FJSC 17; CAV0009.2018 (30 August 2018) has stated the following at paragraph 54 that:

“It is useful to refer to the observation expressed by the Fiji Court of Appeal in Matasavui v State; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118 wherein court said that “No society can afford to tolerate an innermost feeling among the people that offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity.”

19. Madigan J in *State v Mario Tauvoli* HAC 027 of 2011 (18 April, 2011) said:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

20. After assessing the objective seriousness of the offences committed I take 12 years imprisonment (lower range of the scale) as the starting point of the sentence. I add 6 years for the aggravating factors. The interim aggregate sentence is now 18 years imprisonment.

21. The personal circumstances and background of the accused has little mitigatory value, however, the accused comes to court with a good character being a first offender. For the accused good character and mitigation the sentence is reduced by 1 year. The sentence now stands at 17 years imprisonment.
22. The accused pleaded guilty at the earliest opportunity averting the need for the victim to relive all that had happened to her. In *Aitcheson's* case (supra) the Supreme Court has offered the following guidance at paragraphs 14 and 15 in regards to the weight of a guilty plea as follows:

*In **Rainima -v- The State** [2015] FJCA 17; AAU 22 of 2012 (27 February 2015) Madigan JA observed:*

“Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the “high water mark” of discount is one third for a plea willingly made at the earliest opportunity. This court now adopts that principle to be valid and to be applied in all future proceeding at first instance.”

*In **Mataunitoga -v- The State** [2015] FJCA 70; AAU125 of 2013 (28th May 2015) Goundar JA adopted a similar but more flexible approach to this issue:*

“In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment.”

*[15] The principle in **Rainima** must be considered with more flexibility as **Mataunitoga** indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given.*

A careful appraisal of all factors as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.

23. This court accepts that the accused pleaded guilty which is a positive mitigating factor in favour of the accused, however, the guilty plea was not entered in the true spirit of genuine remorse. A genuine remorse can reduce the harshness in the final sentence (*see Manoj Khera v The State, CAV 0003 of 2016 (1 April, 2016)*).
24. Genuine remorse is about genuinely feeling sorry for what a person has done, accepting guilt because of strong evidence and proof of the offender's deeds and then pleading guilty is not genuine remorse *per se*. An early guilty plea is part of that process but the sentencing court then has the responsibility to assess the early guilty plea along with other pertinent factors such as the timing of the plea, the strength of the prosecution case etc. before arriving at a conclusion.
25. In this instance, the accused by pleading guilty has no doubt saved the court's time and also prevented the victim from reliving her experience in court. However, from the materials before the court it is obvious the prosecution had a strong case and also the accused had voluntarily accepted his wrong doings during interrogation hence he had no option but to plead guilty. I don't think the accused has shown genuine remorse. Nevertheless the accused ought to receive a reduction for guilty plea. The sentence is further reduced by 3 years, the interim aggregate sentence is now 14 years imprisonment.

26. The accused has been remanded for 11 months, in accordance with section 24 of the Sentencing and Penalties Act the remand period is deducted as a period of imprisonment already served. The final aggregate sentence is now 13 years 1 month imprisonment.
27. I am satisfied that the term of 13 years and 1 month imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each offence.
28. Mr. Corerega you have committed serious offences against the victim who was your step daughter of 12 years at the time, she was unsuspecting, and vulnerable, you cannot be forgiven for what you have done to this victim.
29. It is the duty of the court to protect children from sexual exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty. The courts in this country have time and again expressed its revulsion by handing down long term imprisonment sentences but still people are not paying any heed. This is yet again another sad case of a child becoming a victim of a matured adult from within the same household.
30. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely. Children are entitled to live their lives free from any form of physical or emotional abuse. When an accused sexually abuses a child, he should not expect any leniency but condign punishment from the court to mark the society's outrage and denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.
31. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was 12 years of age compels me to state that the purpose of this sentence is to punish

offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.

32. Under section 18 (1) of the Sentencing and Penalties Act, I impose 11 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the society which is just in the circumstances of this case.
33. In summary I pass an aggregate sentence of 13 years and 1 month imprisonment with a non-parole period of 11 years to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.
34. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

30 June, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.