

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 117 OF 2019

STATE

V

SEVARO RABOSEA

Counsel : Ms. S. Tivao for State
 : Ms. L. Ratidara for Defence

Date of Judgment : 06 August 2020
Date of Sentence : 12 August 2020

SENTENCE

1. Mr. Sevaro Rabosea, you were convicted after a full defended trial of two counts of Rape and one count of Sexual Assault. The information reads as follows:

COUNT ONE

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (b) of the Crimes Act 2009.

Particulars of Offence

SEVARO RABOSEA on the 8th day of March 2019 at Waikete Village, Nausori in the Eastern Division unlawfully and indecently assaulted ATECA SAULAKI by sucking both her breasts.

COUNT TWO

Statement of Offence

RAPE: Contrary to Section 207 (1) & (2) (c) of the Crimes Act 2009.

Particulars of Offence

SEVARO RABOSEA on the 8th day of March 2019 at Waikete Village, Nausori in the Eastern Division penetrated the mouth of ATECA SAULAKI with his penis, without her consent.

COUNT THREE

Statement of Offence

RAPE: Contrary to Section 207 (1) & (2) (a) of the Crimes Act 2009.

Particulars of Offence

SEVARO RABOSEA on the 8th day of March 2019 at Waikete Village, Nausori in the Eastern Division had carnal knowledge with ATECA SAULAKI, without her consent.

2. You come before this court for sentence.
3. The facts of the case are that, the victim is 27 years of age. She is a mentally impaired person. Both her parents had passed away. She was under the care of her uncle who is also disabled. She is related and known to you. She used to feed the pigs of her uncle every evening. The pig pen was located in an isolated place in the jungle. You knew of the existence of the pig pen and you approached the victim while she was feeding the pigs. You asked her to undress and you sucked her breasts. You penetrated her mouth and her vagina with your penis. The victim did not agree to any of those sexual acts. You knew that the victim is a mentally impaired person. You did not care if the victim was consenting or not for the sexual acts. You raped and sexually assaulted the victim.
4. The maximum penalty for rape is imprisonment for life.
5. The tariff for Rape in Fiji is well settled. When the victim is an adult, a minimum of 7 years' imprisonment should be imposed. *Particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that*

starting point (*Mohamed Kasim v The State* (unreported) Cr. Case No. 14 of 1993; 27 May. The sentencing tariff ranges from 7- 15 years imprisonment.

6. The maximum penalty for Sexual Assault is 10 years' imprisonment. The tariff for the offence of Sexual Assault ranges from 2 to 8 years' imprisonment, the higher tariff being reserved for serious sexual assaults [*State v Epeli Ratabacaca Laca*, HAC 252 of 2011].
7. The convictions are based on the same facts. Therefore, this is a fit case to impose an aggregate sentence in terms of Section 17 of the Sentencing and Penalties Act. Accordingly, I would impose an aggregate sentence for all the counts you are convicted of.
8. I now proceed to craft your sentence that is proportionate and just in all the circumstances of this case.

Aggravating Features

- a. The victim is a mentally impaired person and was highly vulnerable. You knew of her mental capacity and exploited her vulnerability.
- b. The victim trusted you as an elderly relative. You breached that trust.
- c. There is a huge age gap between you and the victim. You are a grandfatherly figure to the victim.
- d. The Medical Report notes the physical harm received by the victim as a result of this attack. The mental, and emotional suffering (psychological harm) caused to the victim is evident as per her Victim Impact Statement.
- e. There is evidence of degree of pre-planning.

Mitigating Features

9. Your counsel has submitted the following mitigating features.
 - a. You are an elderly person, 79 years of age. You have 10 children, grandchildren and great grandchildren.
 - b. You are a first offender. For the past 79 years, you have maintained a clear record.

10. You have been in remand for 162 days. I have taken the remand period into consideration in deciding your sentence.
11. You have committed serious offences. The culpability level is high in this case. The harm caused to the victim is irreparable. Having considered the gravity of the offence and the harm caused to the victim, I pick a starting point of 9 years from the lower range of the tariff for rape.
12. I increase your aggregate sentence by 3 years to reflect the aggravating features of all the offences you have committed. I give a discount of 12 months to reflect the remand period and the mitigating features to arrive at an aggravated sentence of 11 years' imprisonment.
13. It is unfortunate that you have committed these offences at the twilight days of your life journey. As a senior citizen, you must be ashamed of your actions. You have committed these offences on a highly vulnerable person in our society who deserved care and protection from people like you. In view of the increasing trend of sexual offences in the country, it is questionable if the lengthy custodial sentences imposed by this court on almost daily basis have had a considerable general deterrence effect on potential sex offenders. However, the sentence must nearly reflect the abhorrence and public denunciation of your actions. The primary purpose of sentencing for this matter should be denunciation.
14. Mr. Sevaro Rabosea, you are sentenced to 11 years' imprisonment with a non-parole period of 8 years.
15. 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge

Judge

At Suva

12 August 2020

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence