

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 101 OF 2019

STATE

V

EMONI CAVUTU

Counsel : Ms. W. Elo for State
: Ms. L. Manulevu for Defence

Dates of Judgment : 9 November 2020

Date of Sentence : 12 November 2020

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

SENTENCE

1. Mr Emoni Cavutu you have been convicted of three counts of Sexual Assault and one count of Digital Rape. The relevant part of the information reads as follows:

COUNT ONE

Statement of Offence

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

Particulars of Offence

EMONI CAVUTU on the 20th day of February 2019 at Vatuwaqa, in the Central Division, unlawfully and indecently assaulted **SS** by touching her breast.

COUNT THREE

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

Particulars of Offence

EMONI CAVUTU on the 21st day of February 2019 at Vatuwaqa in the Central Division unlawfully and indecently assaulted **SS** by touching her breast.

COUNT FOUR

Statement of Offence

RAPE: contrary to section 207(1) and (2) (b) of the Crimes Act 2009

Particulars of Offence

EMONI CAVUTU on the 21st day of February 2019 at Vatuwaqa, in the Central Division, penetrated the vagina of **SS** with his finger, without her consent.

COUNT FIVE

Statement of Offence

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

Particulars of Offence

EMONI CAVUTU between 1st day of February and the 28th day of February 2019, **on an occasion other than that mentioned in Count 1, Count 2 and Count 3** at Vatuwaqa in the Central Division, unlawfully and indecently assaulted **SS** by touching her breast.

2. The victim is your niece. She was a child of 14 years of age at the time of the offence. You knew she is from a broken family. She had to leave her village and come to your house because her step-mother did not like her. She is an asthmatic patient and you knew of her health condition. She was in a vulnerable position and under your authority at the time of the offences.
3. The assault relating to count 1 took place when the victim came out of the bathroom after a shower. You obstructed her movements and did not allow her to go out. When she tried to escape, you squeezed her breasts. She was wearing just a towel at that time.
4. The assault relating to count 3 took place when the victim was suffering from an asthma attack. You started massaging her body starting from her back and finally squeezed her breasts. She had taken off her t-shirt and was wearing only the bra at that time.
5. When you were massaging, the victim felt weak and fell asleep. She was woken when she felt the pain in her vagina as a result of you inserting your finger inside her vagina.
6. The attack relating to 5th count occurred when the victim was sleeping. When she woke up, she felt that you were touching her breasts. You inserted his hands underneath her clothes to touch her breasts.
7. The maximum penalty prescribed for Sexual Assault is 10 years' imprisonment. The tariff for the offence of Sexual Assault ranges from 2 to 8 years' imprisonment, the top end being reserved for serious sexual assaults [*State v Epeli Ratabacaca Laca*, HAC 252 of 2011].

8. In *Laca* (supra), In *Laca*, three (3) categories of sexual assaults were identified. :

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

(i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

9. Touching the breasts falls into category 3 above.

10. The maximum sentence for Rape is life imprisonment. The sentencing tariff for juvenile rape ranges from 11 years to 20 years' imprisonment. [*Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018)].

11. Rape is a serious crime. By prescribing life imprisonment for this offence, the law makers expect courts to impose harsher punishment on rape offenders. When this offence is committed on a child, it becomes most outrageous. Not only the offender but potential offenders must be deterred. The Constitution requires the courts to protect children who are vulnerable segment of our society. They are entitled to live their lives free from any

form of physical or emotional abuse. They are entitled to trust their family members for protection. This heinous crime is most prevalent in Fiji and the offenders must be severally punished to denounce and to send a clear message to the community that no such offending will be tolerated by courts.

12. Bearing in mind Section 11(1) of the Constitution, Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.
13. Having considered the gravity of the offences and the harm caused to the victim, I start your sentence with a starting point of 11 years.
14. It is aggravating that you have committed these offences on a vulnerable child. She is an asthmatic patient. Having been forced to leave her village, the victim was in a helpless situation. She trusted you as her uncle and she did not believe that you would do this to her. You breached that trust. Given the age gap between you and the victim, you are a fatherly figure to her. For these aggravating features I would increase your sentence by 3 years to reach 14 years.
15. I have considered the mitigating features brought to my attention by your counsel. You are 61 years of age, a father of five children. You seek mercy of this court. You have no active previous convictions, so I consider you to be a first offender. I deduct one year and 4 months to reflect these mitigating features.
16. You have spent approximately 8 months in the remand centre. The remand period is deducted from your sentence to arrive at a sentence of 12 years' imprisonment for Rape count.
17. I pick a starting point of 2 years for each count of Sexual Assault. Having considered the same aggravating and mitigating features, I find that a sentence of 2 years for each count of Sexual Assault is appropriate.

18. To balance your chances of rehabilitation with the deterrent effect of the sentence, I fix a non-parole period at 10 years. You are therefore eligible to be released on parole after serving 10 years in the correction centre.

19. Summary

Counts 1, 3, and 5 - 2 years' imprisonment for each count.

Count 4 - 12 years' imprisonment.

The sentences are to be served concurrently with a non-parole period of 10 years.

20. You have 30 days to appeal to the Court of Appeal.



At Suva

12 October 2020

A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

Judge

Solicitors: Office of Director of Public Prosecution for State
Legal Aid Commission for Defence