

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 089 OF 2020

THE STATE

V

MAILE FINAU LATAMAI

Counsel : Mr. Mohammed I. Rafiq for State
Mr. P. Gade for Defence

Date of Judgment : 26 May 2023

Date of Sentence Hearing : 02 June 2023

Date of Sentence : 05 June 2023

(The name of the complainant is suppressed. She is referred to as LR)

SENTENCE

1. Mr. Maile Finau Latamai, you stand convicted after trial of one count of Rape on the following information.

Statement of Offence

RAPE: Contrary to section 210 (1) and (2)(a) of the Crimes Act, 2009.

Particulars of Offence

MAILE FINAU LATAMAI between the 1st day of October 2018 and the 31st day of October 2018 at Sigatoka in the Western Division penetrated the vagina of LR with his penis, without her consent.

2. The victim in this case is your first cousin. She was 13 years old at the time of the offence. In October 2018, when both of her parents had gone to attend a funeral, you suddenly entered her bedroom. You started touching her body when she did not want you to. You pushed her down and came on top of her. You inserted your penis into her vagina without her consent and moved back and forth for few minutes. She bled out and felt pain in her vagina. She felt sad. You told her not to tell anyone and, if she did, you would do something to her.
3. After the incident she was scared of you and refrained from disclosing the full details of the harassment. The complaint to her sister that you harassed her did not produce any effective result so as to feel her comfortable living at home. When you kept on coming to her house after the incident, she fled home and stayed with a friend. She told Social Welfare Office in detail everything you had done to her. When the matter came to light, you went to her house with her uncle seeking forgiveness. Her father forgave you but the matter had been reported to police.
4. The maximum punishment for Rape is life imprisonment. The sentencing tariff for juvenile rape ranges from 11 years to 20 years' imprisonment. [Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)].
5. In selecting your sentence that is best suited to you, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I would also have regard to Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having due regard to the seriousness of the offence and harm caused to the victim, I would select the starting point. The final sentence will be determined after making due adjustments for the aggravating and the mitigating factors.
6. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on Rights of the Child to which Fiji is a party and our own Constitution require the courts to protect the

children who are vulnerable members of our society. Our civilised society and the children, expect elders and relatives in a domestic setting to care and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.

7. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark the society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and to others with similar impulses that, if anyone yield to this crime will meet with severe punishments.
8. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 11 years from the bottom range of the tariff as the first step in the sentencing process.
9. I identified the following aggravating and mitigation factors with the help of the submissions filed by the Counsel:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. You were 36 years old at the time of the offence when your victim was a child of 13 years of age.
- (b). You took the opportunity and exploited the vulnerability of a child when her parents were away.
- (c). The trauma caused to the child victim scarred her rest of her life. In view of the evidence led in trial, I need no expert evidence to assess the psychological impact on the victim which is enormous and your offence made her life miserable. The offence forced her to leave home and relocate herself in Suva.

- (d). You warned the victim not to tell anyone what you had done to her and prevented her from seeking justice. When the matter came to light, you tried to influence her by using the traditional apology –*bulubulu*, practiced in our society.
- (e). You are her first cousin and an adult in a domestic environment. You breached her trust.

Mitigating Factors:

- (a). In mitigation, your Counsel informed that you are now 40 years of age and a subsistent farmer earning \$ 400 a month. You are living with your elderly parents and a nephew and you are the sole breadwinner of the family. It is submitted that your elderly father is suffering from hernia and mother from cancer. None of these claims are supported by medical evidence. Personal circumstances in anyway are of little mitigatory value.
 - (b). You do not have any previous convictions. You have maintained a clear record over the past 40 years. However your good character in terms of previous nil convictions is of little help as you committed the offence in breached of trust.
 - (c) Even though you made an attempt to reconcile with the victim and her family and made the victim comfortable, you denied the wrongdoing in Court and made he relive her ordeal in Court. I do not think you are genuinely remorseful of your action.
10. I add 3 years and 3 months to the starting point of 11 years for above mentioned list of aggravating factors to arrive at an interim sentence of 14 years and 3 months and reduce 1 year for mitigating factors to arrive at a sentence of 13 years and 3 months' imprisonment.
 11. According to the State, you had been in remand roughly for 3 months. The remand period is deducted from your sentence to arrive at a final sentence of 13 years' imprisonment.
 12. Taking into consideration your potential for rehabilitation and the gravity and the impact of your offence on the society, I impose a non- parole period of 11 years.

13. Summary

Mr. Maile Finau Latamai, you are sentenced to an imprisonment term of 13 years with a non-parole period of 11 years.

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



Aruna Aluthge
Judge

05 June 2023

At Lautoka

Counsel:

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