

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 050/2012**

**BETWEEN: THE STATE**

**AND: APOROSA TUICOLO**

**COUNSEL: Ms A Vavadakua for the State  
Mr J Savou for the Accused**

**Date of Trial: 25-28/03/2013**

**Date of Summing-Up: 02/04/2013**

**Date of Judgment: 03/04/2013**

**Date of Sentence: 08/04/2013**

## **SENTENCE**

[Name of the victim is suppressed. She will be referred to as AL]

01. The Director of Public Prosecution had preferred the following charge against the accused above named.

### **FIRST COUNT**

#### **Statement of Offence**

**RAPE:** Contrary to section 207(1) and 207(2) (a) of the Crimes Decree No: 44 of 2009.

**APOROSA TUICOLO** on the 26<sup>th</sup> day of July 2011, at Nataveya Village, Naitasiri, in the Central Division, had carnal knowledge of AL, without her consent.

02. After trial on the charge, the accused was found guilty on the charge. Accordingly he was convicted of committing Rape.

03. In this case the victim gave evidence first. According to her she is residing at Nataveya Village, Naitasiri with her grandmother since her birth. She has not gone to school nor can read or write. She does not know her age. Her mother is living and she does not know her father. On the day of the incident before the lunch while she was cooking dalo with Litiana in the kitchen accused who is her neighbour called her from his sister's house and requested to bring his bed sheet which was on the clothes line. As per request she took the bed sheet and put inside the accused's house. At that time accused closed the main door and dragged her inside the room. Thereafter he forcibly removed her sulu and closed her mouth. While she was lying on her stomach accused removed her panty and inserted his penis in to her anus.
04. He took up the position that never had anal sex with the victim and therefore denied the charge. According to him he was at Talica Bativesi's house at the relevant time.
05. As per section 207(1) (2) (a) of the Crimes Decree No: 44 of 2009 the maximum sentence for an offence of Rape is to imprisonment for life.

### **Tariffs for Rape**

06. In the case of **Chand v State** [2007] AAU005. 2006S (25 June 2007), the court referred to the case of **Mohammed Kasim v The State** Appeal 14 of 1993 where the same court observed:

"We consider that any rape case without aggravating or mitigating feature the starting point for sentencing an adult should be a term of imprisonment of 7 years. It must be recognized by the courts that the crime of rape has become altogether too frequent... the sentences imposed by the courts for that crime must...reflect an understandable public outrage"

In **Sireli v State** [2008] FJCA 86; AAU0098 of 2008S (25 November 2008), the court also referred to the case of **State v Lasaro Turagabeci & others** HAC 0008 of 1996, the court observed:

"The courts have made it clear that rapist 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 of 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 sentence”.

In the case the complainant was a child at the time of the incident. Hence the tariff for the rape of a child is a sentence between 10 to 15 years. See **Mark Mutch v The State** Criminal Appeal No.AAU 0060 of 1999, Fiji Court of Appeal; The actual sentence will depend on the mitigating and aggravating factors.

In **State v AV** [2009] FJHC24: JAC 192.2008(2 February 2009) the court stated:-

“Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assault 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.”

07. The accused is 22 years of age. He is the sole bread winner of the family. His mother is 53 years old and his younger sister is 13 years old. His sister is studying and he spends for her education. Thought he lives in the same village and never interfered with the witnesses. Traditional apology tendered and which was accepted by victim’s family.
08. In **O’Keefe v State** [2007] FJHC: 34 the Fiji Court of Appeal held that the following principle of sentencing:

“When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person”
09. I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially those of the sections set out below in order to determine the appropriate sentence.
10. Section 15(3) of the Sentencing Decree provides that:

“as a general principle of sentencing, a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the

objectives of sentencing stated in Section 4, and sentence of imprisonment should be regarded as the sanction of last resort taking into account all matters stated in the General Sentencing Provisions of the decree”.

11. The objectives of sentencing, as found in section 4(1) of the Decree, are as follows:
  1. To punish offenders to an extent and a manner, which is just in all the circumstances;
  2. To protect the community from offenders;
  3. To deter offenders or other persons from committing offences of the same or similar nature;
  4. To establish conditions so that rehabilitation of offenders may be promoted or facilitated;
  5. To signify that the court and the community denounce the commission of such offences; or
  6. Any combination of these purposes.
  
12. Section 4(2) of the Decree further provides that in sentencing offenders, a Court must have regarded to:
  - (a) The maximum penalty prescribed for the offence;
  - (b) Current sentencing practice and the terms of any applicable and guideline Judgments;
  - (c) The nature and gravity of the particular offence;
  - (d) The defender’s culpability and degree of responsibly for the offence;
  - (e) The impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;
  - (f) Whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

13. Now I consider the aggravating factors:
1. The victim is illiterate and never gone to school.
  2. The accused forcibly committed rape on the victim.
  3. The accused violated the trust of the victim as her neighbour.
14. Now I consider the mitigating circumstances:
- (a) Accused is the sole breadwinner of the family.
  - (b) Accused is 32 years old and a farmer by profession.
  - (c) He looks after his sister's education.
  - (d) He is remorseful.
  - (e) Traditional apology tendered and which was accepted by victim's family.
15. Considering all aggravated and mitigating circumstances I sentence you as follows:
- I take 10 years imprisonment as the starting point. I add 03 years for aggravating factors to reach the period of imprisonment at 13 years. I deduct 03 years for the mitigating factors.
16. Your sentence is 10 years imprisonment.
17. Acting in terms of section 18(1) of the Sentencing and Penalties Decree, I impose 08 years as non-parole period.
18. 30 days to appeal.

P Kumararatnam  
**JUDGE**

At Suva  
08<sup>th</sup> April 2013