

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 034/ 2013

BETWEEN : **STATE**

AND : **ESEROMA VAKACEGU**

COUNSELS : **Ms L Latu for the State**
Ms N Nawasaitoga for the Accused

Dates of Trial : **03-05/03/2014**

Date of Summing Up : **06/03/2014**

Date of Judgment : **07/03/2014**

Date of Sentence : **11/03/2014**

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

SENTENCE

[01] The Director of Public Prosecution had preferred the following charges against the above named accused.

FIRST COUNT
Statement of Offence

ABDUCTION OF YOUNG PERSON: Contrary to Section 285 of the Crimes Decree 44 of 2009.

Particulars of Offence

ESEROMA VAKACEGU, on the 18th day of January 2013 at Suva in the Central Division, unlawfully took U.T, being under the age of 18 years, out of the possession and against the will of the father.

SECOND COUNT
Statement of Offence

RAPE: Contrary to Section 207(1) and 207(2) (c) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

ESEROMA VAKACEGU, on the 18th day of January 2013 at Suva in the Central Division penetrated the mouth of U.T, with his penis, without her consent.

THIRD COUNT
Statement of Offence

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

Particulars of Offence

ESEROMA VAKACEGU, on the 18th day of January 2013 at Suva in the Central Division had carnal knowledge of U.T, without her consent.

- [02] After the trial, the accused was found guilty of charges of Abduction and Rape (two counts). Accordingly he was convicted.
- [03] The accused, pretending that he was taking the victim to Ministry of Education (Marela House), accompanied the victim to Sunset Motel and committed rape on her against her will. The incident happened on 18/01/2013. The accused got friendly with the victim through Facebook.
- [04] The accused giving evidence in court admitted that he accompanied the victim to Sunset Motel on 18/01/2013 and requested for sex. Victim refused his request as she had her monthly period. Accused denied that he had sex with the victim forcibly. He has admitted the same in his caution interview statement.
- [05] The doctor who examined the victim stated that she observed a fresh tear at 6 0'clock position in the victim's vagina.

[06] As per Section 285 of the Crimes Decree No: 44 of 2009 the maximum sentence for Abduction is 05 years. The maximum sentence for an offence of Rape under section 207(1) and (2) (a) and (c) is imprisonment for life.

Tariffs for Abduction

[07] There has been no tariff set for the offence of Abduction. In the case of **State v Sausau**-Sentence [2012] FJHC 1301; HAC 111.2009(28 August 2012) Justice Madigan discussed the sentencing for the offence of Abduction under English Court of Appeal case **Spence and Thomas** 5 Cr. App. R(S)413:

“.....that the top end of sentencing is reserved for cases where the victim is taken hostage or ransom has demanded, and at the maximum if undue violence or fire arms used. The bottom end of the tariff can appropriate in cases of family disputes or lovers tiffs.”

Tariffs for Rape

[08] 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 and the sentences imposed by the courts for that crime must more nearly reflect an understandable public outrage”

[09] 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”.

[10] 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.

...

The tariff for rape of a child is between 10-14 years imprisonment. (**Mutch v State, Cr. App. AAU0060/99, Mani v State, Cr. App. No.HAA0053/02L, State v Saitava, Cr. Case No: HAC10/07, State v Marawa, Cr. Case No: 016/03, Drotini v State, Cr. App. AAU001/05 and State v Tony, Cr. App. No. HAA003/(08)**)”

[11] With the latest Court of Appeal Judgment of **Anand Abhay Raj v The State** Criminal Appeal No.AAU0038 of 2010 (5 March 2014), in paragraph 18 that states:

“Rapes of juvenile (under the age of 18 years must attract a sentence of at least 10 years and the accepted range of sentence is between 10 and 16 years.”

[12] Lord Lane in **R v Roberts** (1982) 1 All ER 609 stated that in sentences of Rape the sentence should be such as to reflect the following:

“First of all to mark the gravity of the offence. Second to emphasize public disapproval. Third to serve a warning to others. Fourth to punish the offender and last but not the least, to protect women.”

[13] The accused is 23 years of age and previously resided at Lot 11 Ritova Street, off Rewa Street in Suva. He is unemployed but he was engaged in local artist group. He wishes to pursue theological studies and become a pastor in the interdenominational Church.

[14] 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”

[15] 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.

[16] 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”.

[17] 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.

[18] Section 4(2) of the Decree further provides that in sentencing offenders, the 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;

- [19] The accused, by deception, accompanied the 15 year old victim to Sunset Motel to commit an offence namely Rape.
- [20] The accused is known to the victim as a Facebook friend. But he took the advantage of the friendship and committed his lustful sexual misconduct on a innocent victim.
- [21] The accused showed no remorse before and during the trial. The accused allowed the victim to re-live her ordeal in court.
- [22] As a result of accused sexual misconduct, the victim has affected emotionally and psychologically.
- [23] The accused took advantage of victim's naivety and trust when he committed these offending having no regards to the long term effects on the victim.
- [24] Accused's action demonstrate a complete disregard of the clearly defined societal, religious and traditional rules that prohibit sexual relation with a minor girl.
- [25] The accused is 23 years. He is a first offender. He has no previous convictions of any unlawful activity and has a clean police record.
- [26] Accused wishes to pursue theological studies to become a pastor.
- [27] Considering all aggravating and mitigating circumstances I sentence you as follows:
1. For 1st count I take 03 years imprisonment as starting point. I add 01 year for aggravating factors to reach the period of imprisonment at 04 years. I deduct 02 years for mitigating factors.

2. For 2nd count I take 12 years imprisonment as the starting point. I add 03 years for aggravating factors to reach the period of imprisonment at 15 years. I deduct 02 years for the mitigating factors.

3. For 3rd count I take 12 years imprisonment as the starting point. I add 03 years for aggravating factors to reach the period of imprisonment at 15 years. I deduct 02 years for the mitigating factors.

[28] I order all the sentences to run concurrently to each other. In summary you are sentenced to 13 years imprisonment.

[29] Considering totality principle and acting in terms of Section 18(1) of the Sentencing and Penalties Decree, I impose 10 years as non-parole period.

[30] 30 days to appeal.

P Kumararatnam
JUDGE

At Suva
11/03/2014