

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 222 OF 2013

STATE

-v-

VILIAME SAWAILAU

Counsels : **Mr. Semi Babitu for the State**
Mr. Roneel Kumar for the accused

Date of Hearing : **30th January 2014**

Date of Sentence : **31st January 2014**

[Name of the victim is suppressed and she is referred to as SM]

SENTENCE

1. The accused is before the Court for sentence, after being convicted by the learned Magistrate of Rakiraki to the following charge.

Statement of Offence

RAPE: Contrary to Section 149 and 150 of the Penal Code, Cap 17.

Particulars of Offence

VILIAME SAWAILAU, on the 25th of May, 2007 at Nukulau, Ra in the **WESTERN DIVISION**, had unlawful carnal knowledge of **SM** without her consent.

2. You pleaded not guilty to above charge. Following trial from 19.4.2013 to 4.12.2013 you were found guilty on above count against you.
3. The learned Magistrate had convicted you and matter was transferred to this Court for mitigation and sentence acting under Section 190 of the Criminal Procedure Decree 2009.
4. The following facts were proven in evidence during the trial. The accused who is the father of the 17 year old victim had assaulted the victim and directed her to come home from a nearby house and then forcibly raped her. The victim had immediately complained to an aunt and then to the village head man. The matter was reported to the Police following day. The accused was arrested and produced after being interviewed under caution.
5. You had no remorse for your above conduct.
6. According to the Penal Code the maximum punishment for rape is imprisonment for life. It is a serious offence. The tariff for rape is well settled since the Judgment of then A.H.C.T. Gates J in **State v Marawa**[2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
7. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed:

“We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the 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.”

8. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 15 years.
9. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 Madigan J held that:

“Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s

children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

In this case 42 year step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

10. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 Nawana J held that:

“The accused’s engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB’s standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and asses even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused’s caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance.”

11. Considering the above, I commence your sentence at 12 years imprisonment for the charge of Rape.

12. Aggravating factors;

- (a) Victim is your daughter you breached the trust between father and daughter.
- (b) You assaulted the victim which resulted in injuries.
- (c) You are not remorseful.

Considering all, I increase your sentence by 3 years now the sentence is 15 years imprisonment.

13. Mitigating circumstances:

- (a) You are first offender at the age of 46 years.
- (b) You are a father of five children.

Considering all, I reduce 2 years from your sentence, now your sentence is 13 years imprisonment.

14. You were in remand since 5th December 2013 after being convicted of this offence. Thus that time period of 1 month and 26 days to be deducted from your sentence.

15. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 12 years as non parole period.
16. I order a permanent Domestic Violence Restraining Order in place, identifying SM as the protected person. The accused is hereby ordered not to have any sort of contact with the said victim directly or by any other means, unless otherwise directed by this Court.

Summary

17. You are sentenced to 12 years and 10 months imprisonment. You will not be eligible for parole until you complete serving 12 years of imprisonment.
18. 30 days to appeal to Court of Appeal.

Sudharshana De Silva
JUDGE

At Lautoka
31st January 2014

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