

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 72 OF 2013

STATE

-v-

VILIAME TUBUYA

Counsels : Mr. A. Datt for the State
Ms. S. Nasedra for the accused

Date of Trial : 1 April 2014 to 2 April 2014

Date of Judgment : 3 April 2014

Date of Sentence : 4 April 2014

(Name of the victim is suppressed. She will be referred to as ML)

SENTENCE

1. The accused is before the Court for sentence, after being convicted to the following charge.

Statement of Offence

INDECENT ASSAULT: Contrary to Section 154 (1) of the Penal Code Cap 17.

Particulars of Offence

VILIAME TUBUYA, between the 1st day of May 2006 and 31st day of August 2006, at Rarawai, Ba in the Western Division, unlawfully and indecently touched the vagina of **ML**.

2. You pleaded not guilty to above charge. Following trial lasting three days in this Court, you were found guilty on above count against you.

3. After considering the unanimous verdict of Guilty of the assessors and having reviewed the evidence and summing up in this trial, the Court decided to concur with the verdict of the assessors and found you guilty of the above charge.
4. The following facts were proven in evidence during the trial. The 13 year old victim is your step daughter. On a Saturday in August 2010, the accused had sent her brother to shop. Her mother had gone to river to pick mussel. The accused had started to touch her legs while playing. He had touched up to vagina using his fingers. He had lifted her panty and put his fingers inside. She felt scared. This had continued for about 10 minutes. The accused had told her not to tell anyone. He had told her he will kill her or punish her. He had promised her to give pocket money in return for not telling anyone.
5. You had no remorse for your above conduct.
6. According to the Penal Code the maximum punishment for Indecent Assault is 5 years imprisonment.
7. The tariff for Indecent Assault is well settled since the Judgment of Hon. Madam Justice Nazhat Shameem in **Rokota v The State** [2002] FJHC 168;HAA 0068.2002S (23 August 2002):

'Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty which saves the victim the trauma of giving evidence.'

There are the general principles which affect sentencing under Section 154 of the Penal Code. Generally, the sentence will fall within the tariff, although in particularly serious cases, a five year sentence may be appropriate. A non-custodial sentence will only be appropriate in cases where the ages of the victim and the accused are similar, and the assault of a non-penetrative and fleeting type. Because of the vast differences in different types of indecent assault, it is difficult to refer to any more specific guidelines than this.'

8. Considering the above, I commence your sentence at 2 years imprisonment.

9. Aggravating factors;

(a) You abused your position of trust and authority

(b) The age gap is 30 years

(c) You failed to show any remorse for your actions and no repentance,

(d) Loss of dignity and emotional suffering on the part of the victim.

Considering all, I increase your sentence by 2 years now the sentence is 4 years imprisonment.

10. Mitigating circumstances:

(a) Family dependent on you

(b) You are 50 years old

(c) You are first offender due to spent previous convictions.

Considering all, I reduce 6 months from your sentence now your sentence is 3 years and 6 months imprisonment.

11. You were in remand from 2.4.2013 for a period of 1 year. I deduct that period from above sentence. Now your sentence is 2 years and 6 months.

12. You are praying that the sentence be suspended. However, considering the nature of the offence this is not a fit case to suspend your sentence under Section 26 (1) of the Sentencing and Penalties Decree.

13. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 2 years as non parole period.

Summary

14. You are sentenced to 2 years and 6 months imprisonment. You will not be eligible for parole until you complete serving 2 years of imprisonment.

15. Having considered the nature of the relationship you had with the victim, I order a permanent **Domestic Violence Restraining Order (DVRO)** in place, identifying victim ML as the protected person. You are hereby ordered not to have any contact with the victim directly or by any other means, unless otherwise directed by this Court.

16. 30 days to appeal to Court of Appeal.

Sudharshana De Silva
JUDGE

At Lautoka
04th April 2014

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