

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 058/2013

BETWEEN : THE STATE

AND : SEVANAIA MIKAELE

COUNSEL : Ms. P. Low for the State
Mr. P. R. Lomaloma for the Accused

Dates of Trial : 19-22/05/2014
Date of Summing Up : 22/05/2014
Date of Judgment : 22/05/2014
Date of Sentence : 23/05/2014

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

SENTENCE

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

The First Count

Statement of Offence

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

Particulars of Offence

SEVANAIA MIKAELE between the 1st day of January 2008 and the 30th day of June 2008, at Vunisalusalu, Cakaudrove in the Northern Division, had the unlawful carnal knowledge of a girl namely I.M. without the said I.M's consent.

- [02] After trial on the charge, the accused was found guilty of charge of rape. Accordingly he was convicted.
- [03] According to the victim when she was three years old, her uncle Sevanaia Mikaele and her aunty brought the victim to their house and looked after her. She is related to her aunty. She went back to her mother when she was 7 years old. She came back to her uncle when she was 9 years old. From Class 4 to Form 03 she lived with her uncle. As she got pregnant she did not go to school after Form 03. She attended Vunisalusalu Central School. For her secondary education she went to Vaturova Koroalau Secondary School. In the year 2008, she was raped several times by the accused against her will. She was threatened by the accused after he raped her. She was 14 years old when accused raped her. She gave birth to a child in the year 2011. The accused looked after the victim as his own child.
- [04] The accused admitted that he had sexual intercourse with the victim with consent.

- [05] As per Section 149 and 150 of the Penal Code Cap.17 the maximum sentence for an offence of Rape is to imprisonment for life.

Tariff 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”.

- [07] 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”.

- [08] In the case of **Drotini v The State** [2006] FJCA 26; AAU0001.2005 (24 March 2006); the court noted following:

“There are few more serious aggravating circumstances than where the rape is committed on a juvenile girl by a family member or someone

who is in a position of special trust. The seriousness of the offence is exaggerated by the fact that family loyalties and emotions all too often enable the offender or other family members to prevent a complaint going outside the family. If the child then remains in the family home, the rapist often had the opportunity to repeat the offence and to hope for the same protection from the rest of the family."

[09] In the case the complainant was a 14 year old 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.

[10] The accused is 49 years and lives with his family.

[11] 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"

[12] I have carefully considered these submissions in light of the sections 4(1), 4(2) and 15(3) of the Sentencing and Penalties Decree No: 42 of 2009.

[13] The accused is a relation of the victim and he seriously disregarded and breached the trust between him and the victim.

[14] Accused was 43 years old and victim was 14 years old at the time of the incident.

[15] The act done to the victim by the accused person took away the victim's dignity in the society.

- [16] The accused took advantage of the trust that the victim had placed on him. He has shattered the society's ties on a relative to a little girl who is seen as a daughter of an uncle who had brought and cared for her since the age of 3 years.
- [17] The accused made the victim to re-live the ordeal again in court in its raw form.
- [18] He has not expressed any remorse during the trial.
- [19] The accused made the victim sexually active at very young and tender age.
- [20] The accused is a first offender and is 49 years of age. He is married and has five children.
- [21] He is the sole breadwinner of the family.
- [22] He regrets what he had done.
- [23] Considering all aggravating and mitigating circumstances I take 12 years imprisonment as 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.
- [24] In summary you are sentenced to 13 years imprisonment.
- [25] Considering all and acting in terms of Section 18(1) of the Sentencing and Penalties Decree, I impose 10 years as non-parole period.
- [26] 30 days to appeal.




P Kumararatnam
JUDGE

At Labasa
23/05/2014