

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 211 OF 2013

BETWEEN: STATE

PROSECUTION

AND: KINIVUWAI DELAILAGI

ACCUSED PERSON

Counsel: Ms. J. Prasad and Ms. D. Kumar for State
Mr. Tawake P for Accused

Dates of Hearing: 11th and 12th May 2015

Date of Summing Up: 13th May 2015

Date of Judgment: 13th May 2015

Date of Sentence: 15th May 2015

SENTENCE

1. Kinivuwai Delailagi, you have been convicted of the following offence:

First Count

Statement of Offence

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

KINIVUWAI DELAILAGI on the 4th day of March, 2013 at Nasinu, in the Central Division had carnal knowledge of **Taina Loana** without her consent.

2. The facts were that you were the de-factor partner of the victim Taina Loana's mother. Taina was living at her grandfather's house. She was 18 years old. When Taina came to your house to collect her clothes on 3rd April 2013 you were alone in the house. Later you pushed her on to the bed, forcefully removed her pants and raped her.
3. This is a gross breach of trust. You were the de-factor partner of Taina's mother and she would have expected you to look after her instead of raping her.
4. The maximum punishment prescribed in law for rape is life imprisonment. In case of **The State v. Marawa** HAC 016.03S Hon. Justice A.H.C.T Gates (as he was then) observed;

"Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and by meting out harsh sentences.

A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public's disapproval and serves as a warning to others who may hitherto regard such acts lightly...."

7 years was taken as the starting point.

5. In case of **Kasim v State** [1994] FJCA 25; AAU 0021j.93S (27 May 1994) it was decided that the starting point for sentencing an adult in any rape case without aggravating or mitigating features, should be a term of imprisonment of seven years.

6. In Kasim's case court said:

"While it is undoubted that the gravity of rape cases will differ widely depending on all the circumstances, we think the time has come for this Court to give a clear guidance to the Courts in Fiji generally on this matter. We consider that in 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."

7. While endorsing the trend in Mohammed Kasim's case, court said in case of **Drotini v The State** [2006] FJCA 26; AAU0001.2005S (24 March 2006):

"The continuing frequency of such cases has resulted in a general increase in the levels of sentences ordered in rape cases by the courts of Fiji. We endorse that trend. We do not suggest that the starting point described in Mohammed Kasim's case should be altered in rape cases in general but the sentencing court should not hesitate to increase the sentence substantially where there are further aggravating factors."

8. The Court of Appeal confirmed in **Anand Abhay Raj** [AAU0038 of 2010], that the sentences for rape of children (under 18) should be in the range of 10 – 16

years. This was approved by the Supreme Court in **Anand Abhay Raj** (CAV003 of 2014).

In the instant case the victim was 18 years old when she was raped.

9. Considering the above without taking into consideration the aggravating and mitigating factors I take 9 years as the starting point.
10. The aggravating factors are that it is a clear breach of trust. You being the defactor partner of the victim's mother you raped her. I also consider the victim impact statement. You also threatened the victim not to tell this to anyone after the offence was committed.
11. In mitigation your counsel has submitted about your personal commitments which can be given little weight. However I take into consideration that you are a father of a 4 month old baby.
12. You have shown no remorse. Therefore you will not get a discount for that. Also your antecedent report shows that you are not a first offender. Therefore you will not get a discount for previous good behavior.
13. I add 5 years for the aggravating factors and deduct 3 years for the mitigating factors.
14. Now your interim sentence is 11 years. I further deduct 6 months for your period in remand in this case.

15. Your final sentence is 10 years and 6 months imprisonment. Your non-parole period will be 9 years.




Priyantha Fernando
Judge

At Suva

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