

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 38 of 2015

BETWEEN : STATE

AND : GORDON AITCHESON

Counsel : Ms. S. Kiran for the State
Mr. Kumar for the Accused

Date of Hearing : 25th of May 2015

Date of Sentence : 01st of June 2015

SENTENCE

1. You, Gordon Aitcheson, stand convicted for one count of indent assault contrary to section 154 (1) and (2) of the Penal Code, which carries a maximum penalty of five years, one count of rape contrary to section 149 and 150 of the Penal Code, and five counts of rape contrary to section 207, (1) (2) (a) and (3) of the Crimes Decree, which carry maximum penalty of life imprisonment.
2. You pleaded guilty for these seven counts on your own free will on the 25th of May 2015. . Having satisfied that you have fully comprehended the legal effect

of your plea and your plea was voluntary and free from influence, I convicted you for count of indecent assault and six counts of rape.

3. It was revealed in the summery of fact, which you admitted in open court, that you have committed these crimes during the period from 1st of January 2006 to 22nd of February 2015. The first victim is your elder daughter and the second victim is your younger daughter. In the year 2006, when the first victim was in class one; you took here in to the bed room after she came home from school. You then removed her under garment and inserted your finger into her vagina. You had been doing this to her since then. She was just 6 years old at that time.
4. In the year 2007, you tried to forcefully inserte your penis into the vagina of the first victim. She started to cry in pain. You tried it for a while and found that blood came out from her vagina. You then got angry and forcefully inserted your finger into her vagina while she continuously cried. When your wife confronted about these incidents, you threatened her that you will kill her, if she reported the matter to police.
5. You started having penile penetration of her vagina after that incident and had been continuously doing this in every afternoon since the year 2007 until on 13th of February 2015. The first victim was helpless as you fought with your wife whenever she confronted you on this issue, making her surrender to your monstrous and shameful act.
6. In December 2014, you took both victims to the bush to collect mangoes. You then deceitfully asked the first victim to stay away and took the second victim further into the bush, where you penetrated your penis into the vagina of the second victim and had sexual intercourse with her.

7. You once again had sexual intercourse with the second victim on 17th of February 2014. You came to her while she was sleeping on the floor of her mother's bedroom. You took her on your shoulder to your room when she pretended that she was sleeping, knowing it was you calling. You then removed her cloths and had sexual intercourse with her.
8. Once again on 22nd of February 2015, you asked the second victim to remove her cloths and have sexual intercourse with you. At that time the first and second victims were folding cloths in your room. You asked the first victim to guard the door while you were having this forceful sexual intercourse with the second victim. At all material time, both victims did not consent for what you did to them. They were forced to have sex with you.
9. This is a case of incestuous father, using his two daughters for surrogate sexual gratification. Many cultures have developed rules and norms that prohibit sexual relationship between closely related persons. Incestuous relationship of parent and children has condemned and deprecated by many societies. The tale of Oedipus, an incestuous relationship between a mother and son, ends in disaster and Oedipus was punished for his incestuous action by blinding himself. It shows the ancient cultural taboos against incest. Edvard Westermarck, a Finish sociologist found that people who raised and spend large amount of time of their lives together, tend to become desensitised to each other and they will not generally develop sexual attraction to each other, which is referred as "Westermarck effect".
10. Accordingly, it appears that a father, using his own daughters as surrogated sexual partners is not only against the acceptable social norms and values, but also the acceptable human behaviours.

11. Social enigma of abusing children for sexual gratification by their own parent need to address promptly and effectively, not only through the judicial process, but also with effective social intervention to minimise the adverse psychological and physical effect of the victim. Parents are the only trusted and dependable persons that a child has in her growing tender years. Turning that trusted dependable person into a monstrous demon who penetrated in to the innocent childhood of the child and destroy it with his own lustful sexual satisfaction, would undoubtedly jeopardise the child entire future life. Therefore, incest is a rape by extortion, in which a child's very childhood becomes a weapon used to control her.

12. Having considered the serious nature of this offence, I now turn my attention to consider the purpose of this sentence. The main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A harsh and long custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offences and also reflect that the civilised society denounce such crimes without any reservation.

13. Justice Temo in State v Tuwai [2011] FJHC 287; HAC075.2010S (24 May 2011) found that the tariff for the offence of indecent assault is between 1 to 4 years. His lordship further held that more serious the assault is, the higher the sentence. It was held in Saumaimuri v The State (2004) FJHC 56; HAA0015J.2004S (5 March 2004) that the tariff for indecent assault is 1 to 3 years. Justice Shameem in Rokota v State (Criminal Appeal No HAA0068 of 2002) held that;

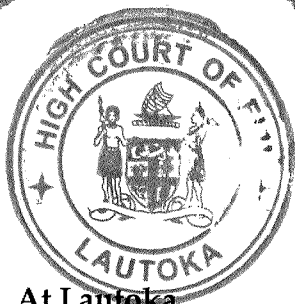
“from these cases a number of principles emerge. Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the 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 assault were perpetrated, all reflects on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempt to effect apology and reparation to the victim, and a prompt plea of guilty which save the victim the trauma of giving evidence”.

14. Having considered the seriousness and the nature of the offending, I select 1 year as the starting point for the offence of indecent assault.
15. Hon. Chief Justice Gates in **Anand Abhay Raj (Special leave to appeal No. CAV003 of 2014)** held that the tariff for rape of a child is between 10 -16 years' imprisonment period. Having considered the nature of this offence and the seriousness surrounded with the commission of the offence, I select 13 years as the starting point for each of these six counts of rape.
16. The two victims are your own biological daughters. You abused the trust and confident they have for you as their father. You started doing this horrific crime on the first victim when she was just 6 years old. That is the age, a child look for the parent for everything in their life. Instead of cuddle her, protect her with love and affection, you used her vulnerability in her childhood as a weapon to satisfy your reprehensible lust of sexual gratification. You dined both of victims, their childhood, and natural growth with the nature by committing this crime. You deceitfully plot this crime on them by using your position in the family. While doing such, you have threatened your wife not to report this

shameful act to the police, making her helpless against this act. They had no escape, but to surrender to your monstrous and devilish act. You had raped and sexually assaulted the first victim over last 8 years. She was a 6 years old child as that time, and now is a 14 years old teenager. You did the same for the second victim over a period of one year. You used violence against them, when they refused or avoided your lustful demands. The most outrageous incident out of the series of shameful incidents in this crime is that you asked the first victim to guard the door, while you were raping her younger sister, the second victim inside the bed room. I consider these reasons as aggravating factors of this offence.

17. The learned counsel of the accused submitted in her mitigation submissions that you are 37 years old and pleaded guilty at the first available opportunity. By doing so, you have saved the time and resources of the court. More importantly you have saved the victims from undergoing psychological trauma by recalling the memories once again during course of the hearing. I consider the time that you have spent in remand prior to this sentencing in favour of you.
18. Having considered the above mentioned aggravating factors, I increase 4 years to reach 17 years of interim imprisonment period for each count of rape and 5 years for the offence of indecent assault. In consideration of the mitigating factors which I discussed above, I reduce 1 year. Your sentence has now reached to 16 years for the each count of rape and 4 years for the offence of indecent assault.
19. Mr. Gordon Atcheson, I accordingly sentence you,

- i. Four years for the first count,
 - ii. Sixteen years for the second count,
 - iii. Sixteen years for the third count,
 - iv. Sixteen years for the fourth count,
 - v. Sixteen years for the fifth count,
 - vi. Sixteen years for the sixth count,
 - vii. Sixteen years for the seventh count,
20. All the sentence mentioned above are to be served concurrently. Accordingly you are to be served sixteen years of imprisonment period for these seven counts as charged in the information. In pursuant of section 18 (1) of the Sentencing and Penalties Decree, you are not eligible for parole for a period of 15 years.
21. Thirty days (30) to appeal to Court of Appeal.



At Lautoka

01st of June 2015.

R.D. R. Thushara Rajasinghe
Judge

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