

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO.: HAC 041 OF 2014

STATE

-v-

TIMOCI KURIVORA

Counsel : **Ms. J. Fatiaki for the State**
Ms. S. Ratu for the Accused

Date of Conviction: **28th September, 2015**
Date of Sentence: **08th October, 2015**

(Name of the Complainant is suppressed. She is referred to as ET)

SENTENCE

[1] On the 28th of September, 2015, the Accused was found guilty after trial and was convicted by this Court of one count of digital Rape of a seven year girl. The Accused now comes before this Court for sentence on conviction.

[2] The facts of the case were that:

The victim of this case was seven years of age at the time of the incident. Accused was living with victim's mother in a *de-facto* relationship in a rented house in Laselase. When the mother of the victim had gone to a nightshift, accused touched the victim's private part with his hands whilst lying on the bed. Victim demonstrated to Court how the accused touched her private part giving the only inference of penetration. She described the experience as painful. The Doctor finds victim's hymen not intact and opines that perforation of hymen is suggestive of penetration by a blunt object.

- [3] The maximum penalty for Rape is life imprisonment. It is now well settled, and confirmed by the Supreme Court in **Anand Abhay Raj** CAV003.2014 that the tariff for rape of a juvenile is 10-15 years of imprisonment.
- [4] The accused at the time of the rape was twenty eight years old, and the victim was only seven years old, a juvenile.
- [5] State Counsel has filed submissions to guide this Court to arrive at a reasonable sentence that would reflect the gravity of the offence. Defence Counsel has filed submission in mitigation and asks for forgiveness.

Mitigating Factors

- [6] The accused is the first offender and has a clear record hitherto and is young. He has co-operated during police investigations.

Aggravating Factors

- [7] The accused knew of victim's vulnerability. Victim was a juvenile at the time of the rape. The age gap between the accused and the victim was twenty years. Accused exploited her vulnerability to satisfy his lustful desires.
- [8] Victim's mother had gone for a nightshift in the belief that the victim would get fatherly treatment from the accused. Accused has breached that trust placed on him.
- [9] Victim Impact Statement filed by the State indicates that normal behaviour of the victim has been disturbed after the incident.

Sentence

- [10] Having considered all the aspects, now I proceed to sentence the Accused as follows;
- [11] To reflect the gravity of offending, not the offender, I take a starting point of 10 years at the bottom of the tariff for this offence. To reflect the aggravating factors, I add three years to that starting point. In recognition of his strong mitigation of clean record, time he spent in

remand, his personal circumstances and his youth I deduct those three years bringing the sentence back to ten years.

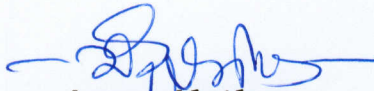
[12] Having considered the Accused's future prospects and desire for rehabilitation, I order that he serve only five years before he is eligible for parole.

[13] 30 days to appeal to the Court of Appeal.

Summary

Accused is convicted for ten (10) years imprisonment. He will serve a minimum of five (5) years before being eligible for parole.




Aruna Aluthge
Judge

At Lautoka
8th October 2015

Counsel:

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