

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION

Criminal Case No. HAC 160 of 2015

BETWEEN : STATE

AND : AB

Counsel : Mr. A. Datt for the State  
Miss S. Nasedra for the Accused

Date of Hearing : 10th of November 2015

Date of Sentence : 19th of November 2015

SENTENCE

1. The names of the victim and the accused are suppressed.
2. You stand convicted for two counts of rape contrary to section 207, (1) (2) (a) and (3) of the Crimes Decree, which carries maximum penalty of life imprisonment. The particulars of the offences are that;

*The First Count*

*AB, sometimes between the 1st day of January, 2012 and 31st day of December 2012, at Waiwai, Ba in the Western Division, had carnal knowledge of CD, a girl under the age of 13 years,*

### *The Second Count*

*AB, sometimes between the 14th day of August 2015 and 31st day of August 2015, at Waiwai, Ba in the Western Division, had carnal knowledge of CD, a girl under the age of 13 years.*

3. You pleaded guilty for these two counts on your own free will on the 10th of November 2015. Having satisfied that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I accordingly convicted you for these two counts of rape.
4. The summery of facts which you admitted in open court on your own free will, reveals a horrendously disturbing case of an incestuous farther, using his 9 years old daughter for surrogate sexual gratification. Sometime between the period of 1st of January 2012 and 31st of December 2012, you started to have sexual intercourse with the victim in the bed room of your house on more than one occasion. On some occasions, you removed the undergarments of the victim and rub you penis on the victim's vagina. On some other occasions, you had inserted into her vagina with your penis. During that time your wife was alive and the victim was around 6 years old. Your wife died in July 2014.
5. In respect of the second count, you have called the victim into your room in night sometimes between 14th of August 2015 and 31st of August 2015. You then removed her cloths and inserted into her vagina with your penis. You have told her not to tell anyone of this. However, the victim has told her grandmother about the incident. The grandmother has then confronted it with you, which you admitted.
6. Incestuous relationship of parents and children has condemned and deprecated by many societies as it not only against the acceptable social norms and values, but also acceptable human behaviours.

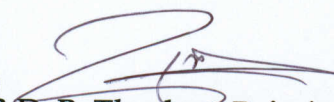
7. Social enigma of abusing children for sexual gratification by their own parent need to address promptly and effectively, not only through the judicial process, but also with effective social intervention to minimise the adverse psychological and physical effect of the victim. Parents are the only 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's entire future life. Therefore, incest is a rape by extortion, in which a child's very childhood becomes a weapon used to control her.
8. 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.
9. 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 two counts of rape.
10. The victim is your own biological daughter. You abused the trust and confident that she has for you as her father. You started doing this horrific crime on the victim when she was just 6 years old. That is the age, a child looks for the

parent for everything in their life. Instead of cuddle and 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 her childhood, and natural growth with the nature by committing this crime. The Summary of Facts reveals that the victim had cried in pain whenever you committed this crime on her. It confirms that you had committed this crime as a heartless man. You have admitted in your caution interview that you once raped the victim in front of your wife, the mother of the victim, which is the most outrageous incident out of the series of shameful incidents in this crime. The victim impact report filed by the Social Welfare Office states that this heinous crime that you committed has adversely affected the victim, both psychologically and socially. I consider these reasons as aggravating factors of this offence.

11. 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 do not give much consideration of your family background, though the learned counsel emphasised it in her mitigation submissions. Furthermore, I consider the time that you have spent in remand prior to this sentencing in favour of you.
12. Having considered the above mentioned aggravating factors, I increase 5 years to reach 18 years of interim imprisonment period for each count of rape. In consideration of the mitigating factors which I discussed above, I reduce 3 year. Your sentence has now reached to 15 years of imprisonment.
13. I accordingly sentence you,

- i. Fifteen years of imprisonment for the first count,
  - ii. Fifteen years of imprisonment for the second count,
14. Both sentences mentioned above are to be served concurrently. Accordingly you are to be served fifteen (15) years of imprisonment period for these two 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 14 years.
15. Since this incident involves with domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Decree. I accordingly make a permanent domestic violence restraining order against the accused person with standard non molestation conditions pursuant to section 24 and 28 of the Domestic Violence Decree. The above domestic violence restraining order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of section 77 of the Domestic Violence Decree.
16. Thirty days (30) to appeal to Court of Appeal.



  
R.D. R. Thushara Rajasinghe  
Judge

At Lautoka

19th of November 2015.

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