

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC. 254 of 2013

STATE

V

INOKE VALEKULA

Counsel : Ms. S. Puamau with Ms. S. Naibe for State
Ms. C. Choy for Accused

Dates of Hearing : 30th November – 01st December 2015

Date of Summing Up: 02nd December 2015

Date of Judgment : 02nd December 2015

Date of Sentence : 07th December 2015

SENTENCE

1. Inoke Valekula, you are convicted of the offence of rape contrary to section 207(1) and (2)(a) of the Crimes Decree 2009.
2. Pursuant to section 207(1) of the Crimes Decree 2009 read with section 3(4) of the Sentencing and Penalties Decree 2009, the maximum punishment for Rape is life imprisonment. It is settled that the sentencing tariff for rape of a child victim is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12).

3. You are the elder brother of the victim's father and the victim was 13 years and 3 months old at the time of the incident. Victim's parents left her and her siblings under the care and protection of you and your wife and they were at Suva when this incident took place at their house at Lomaivuna, Naitasiri between the 22nd September 2012 and the 30th September 2012. You approached her when she was sleeping, you pushed her down when she tried to move away from you, you stopped her from calling her sister by kissing her. Then you raped her. As a result, the victim became pregnant and she became the mother of a child when she was 14 years old.
4. I consider 10 years as the starting point of your sentence.
5. In her victim impact statement, the victim says *inter alia*;
 - a) that at times this incident comes to her mind and it makes her feel sad;
 - b) after the incident she does not mingle with her friends because she is ashamed of what happened. She thinks that her friends would be talking about her with regard to the incident;
 - c) her relatives look at her in a bad way now;
 - d) now she is having a baby to look after;
 - e) she was in form 3 when this happened and this incident disrupted her secondary education.
6. Being her father's elder brother, your conduct is an insult to the title you hold as the victim's 'elder father' or *Ta levu*. You have treated this 13 year old child as a mere object to gratify your lowly desire. You caused the victim to become a mother at an age she would never have even dreamed of. Thus, you took away her childhood from her. Apart from the physical and psychological violation during this incident, you have also violated her right to live a life according to her own free will.
7. I consider the following as aggravating factors;
 - a) Breach of trust being the victim's father's elder brother and her guardian at the time of the incident;
 - b) You are 33 years elder to her and you used force to subdue her;


- c) You caused the victim to become a mother at the age of 14 years and as a result, the victim continues to suffer as indicated in her victim impact statement.
8. Considering the above, I add 7 years to the starting point and now your sentence is 17 years imprisonment.
9. I consider the following as mitigating factors;
- a) you are now 49 years old and had been the sole breadwinner of your family
 - b) you have shown remorse to a certain extent by apologising to the victim and her family
10. You have a previous conviction for Common Assault in 2011. Therefore, I cannot consider that you are a person of previous good character.
11. I deduct 2 years in view of the above mitigating circumstances.
12. Accordingly, I hereby sentence you to 15 years imprisonment and in terms of section 18 of the Sentencing and Penalties Decree 2009; I order that you are not eligible to be released on parole till you serve 11 years of that sentence.
13. Section 24 of the Sentencing and the Penalties Decree reads thus;
- “If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*
14. I note that you were first produced before the Magistrate Court on 03rd July 2013. Though you were granted bail on the 27th August 2013, the records indicate that you continued to be in remand since 03rd July 2013 as you have failed to provide sureties. However, I hold that the period you were in custody be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this

case. I further hold that the period to be considered as served should be 2 years and 5 months.

15. In the circumstances, the time remaining to be served is as follows;
Head Sentence – 12 years and 7 months
Non-parole period – 8 years and 7 months

16. 30 days to appeal to the Court of Appeal.




Vincent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Office of the Legal Aid Commission, Suva.