

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 067 OF 2012

STATE

-v-

JOSEVA VEIVALI

Counsel : **Mr. Niudamu for State**

Accused in Person

Date of Judgment : **17th March, 2016**

Date of Sentencing Hearing : **24th March, 2016**

Date of Sentence : **30th March, 2016**

(Name of the victim is suppressed. She is referred to as AT)

SENTENCE

[1] Mr. Joseva Veivali (Accused) was found guilty after trial and was convicted by this Court on following count. He now comes before this Court for sentence.

Statement of Offence

RAPE: Contrary to Section 207(1) and (2) (a) and (3) of the Crimes Decree 44 of 2009.

Particulars of Offence

JOSEVA VEIVALI, between the 01st day of January 2012 and the 24th day of April 2012 at Lautoka in the Western Division, penetrated the vagina of **AT**.

- [2] The facts of the case in brief were that:

Accused stood in relationship of the biological father of the victim. During the period mentioned in the information, accused and victim visited victim's mother who was in hospital expecting a baby. They stayed at a friend's place in Lautoka. Whilst staying there, accused asked victim to go down the river and asked her to take off her undergarment. Then he took out his penis and put it into her vagina. Victim described the experience as very painful. Blood started coming out. Victim was seven years old and accused was forty-seven years old when the incident occurred.

After doing this, accused warned the victim that if she were to tell anyone he will chop her into pieces. She, however, related the incident to her uncle who then reported the matter to police. Upon internal examination of victim's vagina, doctor found her hymen not intact and opined that she had experienced sexual intercourse. When the Information was filed, accused pleaded guilty to the charge of sexual assault and was sentenced.

Maximum Sentence

- [3] The maximum penalty for Rape is life imprisonment.

Tariff for Rape

- [4] 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 10-16 years' imprisonment.

Starting Point

- [5] Rape is a serious crime. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on such offenders.
- [6] **In State v. AV** [2009] FJHC 24; HAC 192 21.02.2009 it was stated that:

"rape is the most serious form of sexual assault.... Society cannot condone any form of sexual assault on children...Sexual offenders

[7] Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure in domestic environment.

[8] In the case of **Mohammed Kasim v. State** [1994] FJCA 25; AAU 0021j.93S (27 May 1994) it was stated that;

"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". (emphasis is mine)

[9] In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 Justice Paul Madigan stated that:

" Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound."

[10]. Accused's actions demonstrate a total disregard of clearly defined societal, religious and traditional norms that prohibit any kind of sexual relationship between father and daughter. Having considered the culpability of the offending and the impact of the accused's actions on the victim, I pick thirteen years (13) as the starting point.

Aggravating Circumstances

- [11] The age gap between them is nearly forty years. In principle, the younger the child and the greater the age gap between the offender and the victim, the higher the sentence should be.
- [12] The accused is the biological father of the victim. Victim's mother admitted herself to the hospital to deliver a baby. He breached the trust as the father and exploited her vulnerability when her mother is in hospital.
- [13] Accused used his authority over the victim and instilled fear in her to cover up the offending.
- [14] According to the Victim Impact Statement filed, victim has suffered physically and psychologically. She lost her virginity at very young age. Offending left a scar and trauma for the rest of her life.
- [15] Accused pleaded not guilty to the charge and maintained that position right throughout the trial. By doing so, he has not saved the young girl from giving evidence and reliving the ordeal. He has thereby not shown remorse and repentance.
- [16]. I consider the accused's case as a classic case of domestic violence that must attract higher sentence. Under Domestic Violence Decree 2009 domestic violence offence necessarily encompasses raping a daughter.

Mitigating Circumstances

- [17] Accused cooperated with police.
- [18] He is first offender and has maintained a clear record. He expressed his remorse when he was found guilty. He promises not to reoffend and seeks mercy of this court. He has already served nearly three years in prison where he had undergone correction program.

Sentence

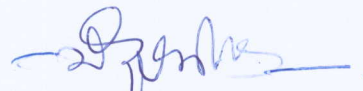
- [19] I add three (3) years to the starting point for above mentioned aggravating factors bringing the interim sentence to sixteen (16) years' imprisonment. I deduct 1 year for the above mentioned mitigating factors bringing the sentence for Rape count to fifteen (15) years' imprisonment.
- [20] Accused was in remand/prison for a period of four years (He had been in remand since 30th April 2012 until he was sentenced for Sexual Assault charge on 18th February 2013). Thus a period of four years (4) is deducted from the sentence. Now the final sentence for Rape count is eleven (11) years' imprisonment. This sentence is concurrent to the sentence already imposed for Sexual Assault charge.
- [21] Acting under Section 18 of the Sentencing and Penalties Decree, I impose a non-parole period of ten years.
- [22] 30 days to appeal to the Fiji Court of Appeal.



At Lautoka
30th March, 2016

Counsel:

- **Office of the Director of Public Prosecution for State**
- **Accused in Person**


Aruna Aluthge
Judge