

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

CRIMINAL CASE NO: HAC. 15 OF 2015

STATE

V

TOMASI BULAGO

Counsel : Mr. M. Vosawale and Ms. L. Bogitini for State
Ms. C. Choy for the Accused

Dates of Hearing : 01st June – 03rd June 2016

Date of Summing Up: 06th June 2016

Date of Judgment : 07th June 2016

Date of Sentence : 07th June 2016

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as TK)

SENTENCE

1. Tomasi Bulago, you stand convicted for two counts of rape under section 207(1) of the Crimes Decree 2009 (“Crimes decree”) and one count of sexual assault under section 210(1) of the Crimes Decree.
2. In brief, between 01st February 2010 and 27th August 2010 the complainant, her mother and her stepfather were living in your house with you and your family. Complainant’s step father is your younger brother. On one night during the aforementioned period when the complainant’s parents were not at home as her mother was admitted in the hospital, you went to the complainant’s room, told her to massage your stomach and then your penis. Then you touched the complainant’s breasts and penetrated the complainant’s

vagina with your fingers. In 2011, the complainant and her family were living at Newtown. Between 1st January 2011 and 27th August 2011, on a day the complainant did not go to school as she was sick and was alone at home, you penetrated the complainant's vagina with your penis. The complainant was below the age of 13 years when you committed the above offences.

3. The maximum sentence for the offence of rape is imprisonment for life and the sentencing tariff for rape of a child is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12).
4. The offence of Sexual Assault under section 210(1) of the Crimes Decree carries a maximum sentence of 10 years imprisonment. Following the case of *State v Laca* [2012] FJSC 1414, this court has been applying an imprisonment term between 2 to 8 years as the tariff for Sexual Assault.
5. Section 17 of the Sentencing and Penalties Decree 2009 ("Sentencing and Penalties Decree"), reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

6. The three offences you are convicted of, form a series of offences of similar character. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Decree, I consider it appropriate to impose an aggregate sentence of imprisonment for the three offences.
7. You are the elder brother of the complainant's stepfather. You have been financially supporting the complainant since 2009. Therefore, you commanded a great deal of authority over the complainant and her family. According to the complainant, her mother does not believe her and her stepfather did not treat her like a daughter. Apparently, the complainant's parents have not provided her with the necessary support, love and care she needed as a child. You used the complainant's vulnerability and your authority over her as the person who financially supported her, in order to sexually abuse her. According to

the complainant's evidence and the Victim Impact Statement, the memories of these incidents mentally disturbed her during her studies at school.

8. I consider the following as aggravating factors;
 - a) you are victim's stepfather's elder brother. There is a breach of trust;
 - b) you are 38 years older than the victim; and
 - c) you used your authority over the victim who did not have a proper parental care and protection.

9. I have considered your counsel's submission on mitigation and consider the following as your mitigating factors;
 - a) no previous convictions; and
 - b) you are 55 years old and married with 5 children.

10. I consider 12 years imprisonment as the starting point of your aggregate sentence. Considering the aforementioned aggravating factors, I add 6 years. Now your sentence is 18 years imprisonment.

11. I deduct 4 years of your sentence considering your mitigating factors.

12. I hereby sentence you for an imprisonment term of 14 years. I order that you are not eligible to be released on parole until you serve 12 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Decree 2009.

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 31st December 2014 and you were granted bail on 04th June 2015. You spent one day in remand pending your sentence. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 5 months and 5 days.


15. Accordingly, you are sentenced to 14 years imprisonment with a non-parole period of 12 years. Considering the time spent in remand, the time remaining to be served is as follows;

Head Sentence – 13 years, 6 months and 25 days

Non-parole period – 11 years, 6 months and 25 days

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 : **Legal Aid Commission, Suva.**