

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 39 of 2017

STATE

V

PONIRITE KOLI

Counsel : Ms. Lavenia Bogitini with Mr. Zenith Zunaid for the State
Ms. Vani Filipe with Mr. Vilisoni Tuicolo for the Accused

Dates of Trial : 6-9 November 2017

Summing Up : 13 November 2017

Judgment : 16 November 2017

Sentence : 24 November 2017

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "PBN"

SENTENCE

[1] Ponirite Koli you have been found guilty and convicted of the following offence for which you were charged:

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act 2009.

Particulars of Offence

PONIRITI KOLI, on the 20th of December 2016, at Suva, in the Central Division, penetrated the mouth of **PBN**, a child under the age of 13 years, with his penis.

- [2] You pleaded not guilty to the above mentioned charge and the ensuing trial was held over 4 days. The complainant PBN, his aunt, Mereti Ranadi, and his mother, Alena Vonokula gave evidence for the prosecution.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found you guilty of the charge of Rape. Having reviewed the evidence, this Court decided to accept the unanimous opinion of the Assessors and found you guilty and convicted you of the charge of Rape.
- [4] You are the complainant's maternal granduncle. It was proved during the trial that, on the 20 December 2016, you raped PBN by penetrating his mouth with your penis. The complainant in this case was 6 years of age at the time of the alleged incident, and as such, he was a juvenile.
- [5] The offence of Rape in terms of Section 207(1) of the Crimes Act No. 44 of 2009 ("Crimes Act") carries a maximum penalty of imprisonment for life.
- [6] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of ***Mohammed Kasim v. The State*** [1994] FJCA 25; AAU 21 of 1993 (27 May 1994); where it was stated:

"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."

- [7] In the case of ***State v. Marawa*** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates said:

"Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences".

- [8] His Lordship Justice Daniel Goundar in the case of ***State v. AV*** [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

“.....Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences”.

[9] In the case of **State v. Tauvoli** [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has 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] In the case of **Anand Abhay Raj v. The State** [2014] FJSC 12; CAV 03 of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.

[11] In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”

[12] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 10 years for the count of Rape.

[13] The aggravating factors are as follows:

- (i) You are the maternal granduncle of the complainant.
- (ii) The complainant considered you as his grandfather (referring to you as "Tai Vo"). As such, you should have protected him. Instead you have breached the trust expected from you and the breach was gross.
- (iii) There was a large disparity in age between you and the complainant. The complainant was only 6 years of age and you were 64 years of age, at the time of the offence. Therefore, there was a difference in age of 58 years.
- (iv) You took advantage of the complainant's vulnerability, helplessness and naivety.
- (v) You have exposed the innocent mind of a child to sexual activity at such a tender age.

[14] In mitigation, it is submitted that you are first offender. It is further confirmed by the State that you are a first offender. In terms of the Previous Convictions Report filed in Court, there have been no previous convictions recorded against you. Therefore, this Court considers you as a first offender and as such a person of previous good character.

[15] You are now 65 years of age, married with five children. It is submitted by your Counsel that you are separated from your wife. It is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating factors.

[16] Considering the aforementioned aggravating factors, I increase your sentence by a further 4 years. Now your sentence is 14 years. As I have stated above, considering that you are a first offender, I deduct 3 years from your sentence for your previous good character. Your sentence is now 11 years.

[17] In the circumstances, your sentence is as follows:

First Count – Rape in terms of Section 207 (1) and (2) (c) and (3) of the Crimes Act - 11 years imprisonment.

[18] Accordingly, I sentence you to a term of 11 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act No. 42 of 2009, I order that you are not eligible to be released on parole until you serve 9 years of that sentence.

[19] Section 24 of the Sentencing and Penalties Act 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.”

[20] You have been in custody for this case since 30 December 2016. Accordingly, you have been in custody for almost 11 months to date. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 11 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[21] In the result, you are sentenced to a term of imprisonment of 11 years with a non-parole period of 9 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 10 years and 1 month.

Non-parole period - 8 years and 1 month.

[22] You have 30 days to appeal to the Court of Appeal if you so wish.



Riyaz Hamza
JUDGE
HIGH COURT OF FIJI



AT SUVA

Dated this 24th Day of November 2017

Solicitor for the State : **Office of the Director of Public Prosecutions, Suva.**

Solicitor for the Accused : Office of the Legal Aid Commission, Suva.