

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 132 of 2017

BETWEEN:

STATE

PROSECUTION

AND:

PAJILIAI BALE

ACCUSED PERSON

Counsel:

Ms. S. Sharma for State
Ms. V. Filipe for Accused

Sentence:

19th December 2017

S E N T E N C E

1. Mr. Pajiliai Bale, you have been charged with one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act, which carries a maximum penalty of ten years of imprisonment and one count of Rape, contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act, which carries a maximum penalty of life imprisonment.
2. You pleaded guilty for these two counts on the 31st of May 2017 and 01st of December 2017 respectively. Having satisfied that you have pleaded guilty on your own free will and understood the consequence of your plea of guilty, I now convict you for each of these two counts as charged.
3. According to the summary of facts, which was submitted by the prosecution and admitted by you in open court, you have committed these crimes on the victim while she came for a family gathering at her grandfather's place. You are related to her as her cousin. You were staying with your grandfather at his house. You were watching TV

with other kids, including the victim in a room while the elders were having their gathering. At that point of time, you went closer to the victim and licked her vagina. You then penetrate her vagina with your finger. You told her not to tell anyone.

4. This is a case of sexual exploitation of a child by a known relative within her own family environment. She is your cousin. The victim was 8 years old at the time this crime took place. The family environment is the most protective and appropriate environment for a child to grow up with confidence and safety. Close family members and relatives are the most trusted and dependable people surrounded during the developmental stages of a child. Therefore, sexually assaulting a child within her own family environment by a known family member is one of the outrageous forms of sexual crime.
5. In view of the seriousness of this offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Hence, the purpose of this sentence is founded on the principle of deterrence and protection of community. Moreover, the court must demonstrate in sentencing that the offenders of this nature are socially abhorrent.
6. Hon. Chief Justice Gates in Anand Abhay Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014) held that the tariff for rape of a child is between 10 - 16 years' imprisonment period.
7. Justice Madigan in State v Epeli Ratabacaea Laca - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012) has expounded the tariff for the offence of Sexual Assault as between 2 years to 8 years' imprisonment, where his Lordship held that:

“The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in Abdul Kaiyum HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.

A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

- i) Contact between the naked genitalia of the offender and another part of the victim's body;*
- ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
- iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.*

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)".

8. The victim was eight years old at that time. It is clear that a crime of this nature adversely affects a child of this age. Hence, I find the level of harm is substantially high in this crime.
9. You have committed this disgraceful sexual crime on the victim in very opportunistic manner. You have exploited her young age and immaturity in order to satisfy your sexual greediness. I accordingly find the degree of culpability in this offending is substantially high.
10. In view of the seriousness of this crime, and the level of harm and culpability, I select twelve (12) years as the starting point for the offence of Rape and three (3) years for the offence of Sexual Assault.

11. You have blatantly breached the trust reposed in you by the victim as her cousin. The age difference between you and the victim was about seventeen (17) years at the time of this crime took place. I consider these factors as aggravating circumstances of this crime.
12. The learned counsel for the defence submitted in mitigation about your family circumstances. However, the family background of the offenders of this nature has very minimal mitigatory value.
13. You are a first offender. You are 19 years old. Therefore, it is appropriate to give you some substantial discount for your previous good character.
14. You pleaded guilty for these two counts at the early stages of this proceeding. By doing that you have save the time of the court and also prevent the victim to recalling all these traumatic ordeal that she had gone through.
15. In view of the above discussed aggravating circumstances, I increased two (2) years to reach interim imprisonment of fourteen (14) years for the offence of Rape and five (5) years for Sexual Assault. I reduce one (1) year for your previous unblemished character and three (3) years for your early plea of guilt. Your final sentence has now reached to ten (10) years of imprisonment for Rape and one (1) year for Sexual Assault.
16. Having considered the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find eight (8) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of eight (8) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.


Head Sentence

17. Accordingly, I sentence you for a period of **ten (10) years imprisonment** for the offence of Rape, contrary to Section 207 (1), (2) (b) and (3) of the Crimes Act and **one (1) year imprisonment** for the offence of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. I further order that you are not eligible for any parole for a period of eight **(8) years**. Both sentences to be served concurrently.

Actual Period of Sentence

18. You have been in remand custody for this case for a period of nearly nine (9) months as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of nine (9) months as a period of imprisonment that have already been served by you.
19. Accordingly your actual sentencing period is **nine (9) years and three (3) months** of imprisonment, with **seven (7) years and three (03) months** of non-parole period.
20. Since this incident involves with domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent domestic violence restraining order against the accused with standard non-molestation conditions and no contact conditions pursuant to section 24 and 28 of the Domestic Violence Act. 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 Act.
21. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva

19th December 2017

Solicitors

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused