

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 32 of 2015

STATE

V

APAKUKI SAUDROMU

Counsel : Ms. S. Naibe for the State.
: Mr. K. Tunidau for the Accused.

Dates of Hearing : 22, 23, 24, 25, October, 2018
Closing Speeches : 29 October, 2018
Date of Summing Up : 30 October, 2018
Date of Judgment : 01 November, 2018
Date of Sentence : 08 November, 2018

SENTENCE

(The name of the victim is suppressed she will be referred to as "MB").

1. In a judgment delivered on 1 November, 2018 this court found the accused guilty and convicted him for one count of indecent assault and one count of rape as per the following information:

FIRST COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to section 212(1) of the Crimes Act 2009.

Particulars of Offence

APAKUKI SAUDROMU between the 1st day of January, 2014 and the 31st day of January, 2014 at Lautoka in the Western Division, unlawfully and indecently assaulted “**MB**”.

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and 2 (a) of the Crimes Act 2009.

Particulars of Offence

APAKUKI SAUDROMU between the 1st day of September, 2014 and the 30th day of September, 2014 at Yasawa in the Western Division, penetrated the vagina of “**MB**” with his penis, without the consent of “**MB**”.

2. The brief facts were as follows:
The victim in the year 2014 was 17 years of age and a Form 5 student her father died when she was in class three and her mother remarried. The accused is the paternal uncle of the victim. In January, 2014 the accused after seeking permission from the victim’s grandfather took the victim to his house so that he could support her education.
3. After the school started the victim had a boil on her right breast, as a result at night the victim did not wear any top and slept wearing her skirt only. One night whilst sleeping the victim felt someone sucking her breast, when she woke she saw it was the accused her uncle. When the victim saw her uncle she was scared and nervous he sat on the bed and told her not to tell anyone about what he had done.
4. The next day the victim told Niko son of the accused and Sivo the baby sitter but they did not do anything. The victim left the house of the accused and went home.

5. In September the same year the accused came to the house of the victim and asked the permission of the victim's grandfather so that he could take the victim to Yasawa. The victim's grandfather agreed so the victim accompanied the accused to Yasawa. At Waya Island the victim saw that a hotel was under construction, there were two quarters, in one of them the victim and the accused slept.
6. The accused slept on the bed while the victim slept on the mattress on the floor. While sleeping the victim felt someone sitting beside her. When she woke up she saw her uncle. At this time he pushed her down on the mattress and told her to take off her pants.
7. The victim took off her pants and so did the accused, who then inserted his penis into the victim's vagina for about three minutes. The victim did not consent to have sexual intercourse with the accused. After having forceful sexual intercourse with the victim the accused went to sleep but the victim did not she cried over what the accused had done to her. The next morning she went home.
8. In November of the same year the accused and the victim were at the house of the victim's cousin Inoke, during the night the victim's mother came looking for the victim and took her to the Police Station where the victim told the police everything the accused had done to her. The accused was arrested and charged.
9. Both counsel filed written sentence submissions for which this court is grateful.
10. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - (a) The accused is a first offender;

- (b) He was 47 years of age at the time of the offending;
 - (c) Is married with 4 children the youngest being 6 years of age and the eldest being 21 years of age;
 - (d) He is not a violent person;
 - (e) There was no evidence of any violence used by the accused on the victim.
11. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj -vs.- The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.
12. The aggravating features are:
- (a) Breach of Trust
The victim is the niece of the accused. The accused grossly breached the trust of his niece by his actions. The accused abused the sanctity of the relationship between an uncle and niece.
 - (b) Planning
The accused had planned to do what he did when everyone was asleep in the house and then seeking permission to take the victim to Yasawa to his workplace. The accused knew the victim was innocent and vulnerable.
 - (c) Age Difference
The victim was 17 years whereas the accused was 47 years of age. The age difference is substantial.
13. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under one of the most serious category of offences. The Supreme Court of Fiji in a recent judgment of *Gordon Aitcheson vs The State, CAV 0012 of 2018 (2 November, 2018)* has confirmed that the tariff for

the rape of a juvenile is now a sentence between 11 years and 20 years imprisonment.

14. It is the duty of the court to protect children from sexual exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty.
15. There has been an increase in sexual offences involving offenders who are known to the victim and matured adults. It is disgusting to note the manner in which the accused had breached the trust of this victim.
16. Section 17 of the Sentencing and Penalties Act states:

“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.”

17. I am satisfied that the two offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.
18. After assessing the objective seriousness of the offences committed I take 12 years imprisonment as the starting point of the aggregate sentence. I add 5 years for the aggravating factors, bringing an interim total of 17 years imprisonment. Since the personal circumstances and family background of the accused has little mitigatory value I find his good character has

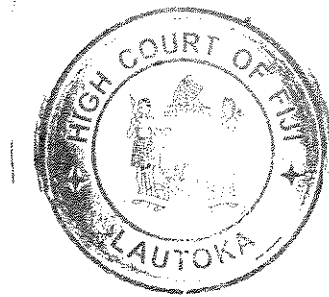
substantive mitigating value. I therefore reduce the sentence by 2 years the sentence now is 15 years imprisonment.


19. I note from court file that the accused was remanded for one month and seven days. In exercise of my discretion I deduct one month and 14 days in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence is 14 years 10 months and 15 days imprisonment.
20. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the head sentence of imprisonment for one count of indecent assault and one count of rape is 14 years 10 months and 15 days.
21. Mr. Saudromu you have committed serious offences against your niece. The victim was unsuspecting and vulnerable you had instilled fear in her by your conduct. You cannot be forgiven for what you had done to this child. You have not only scarred the victim's life forever but have brought shame to the sanctity of the relationship.
22. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on a victim who was 17 years compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
23. Under section 18 (1) of the Sentencing and Penalties Act, I impose 12 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.
24. I am satisfied that the term of 14 years 10 months and 15 days imprisonment 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 offence.

25. In summary I pass an aggregate sentence of 14 years 10 months and 15 days imprisonment with a non-parole period of 12 years to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.

26. 30 days to appeal to the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

8 November, 2018

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs. Kevueli Tunidau Lawyers for the Accused.