

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 149 OF 2016

STATE

-v-

KALAVETI RATU NAWAQAMATE

Counsel : Ms. R. Uce with Ms. S. N. Navia for the State
Ms. K. Vulimainadave for the Accused

Date of Judgment : 29 October 2018

Date of Sentence : 16 November 2018

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

SENTENCE

1. Mr. KALAVETI RATU NAWAQAMATE, you stand convicted of one representative count of Rape and one representative count of Indecent Assault after a full defended trial. The information on which you were convicted reads as follows:

Count 1

Representative

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

KALAVETI RATU NAWAQAMATE between the 17th – 19th of July 2016, at Sigatoka in the Western Division penetrated the vagina of **IN** with his fingers.

Count 2

Representative Count

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) the Crimes Decree No. 44 of 2009.

Particulars of Offence

KALAVETI RATU between the 17th – 19th of July 2016, at Sigatoka in the Western Division unlawfully and indecently assaulted **IN** by kissing her cheek.

2. You now come before this Court for sentence.

3. You were a 74 year-old mature person at the time of the offence. The victim was only 4 year old child. You are related to the victim as her uncle. You called the victim to your house and gave her a pancake. Then you took her to your bed and covered her with a mat. You then took off her underwear and penetrated her vagina with your finger. You did this three times on the same day. The victim cried in pain. You also kissed her cheeks more than once.

4. Victim's aunty informed victim's mother that the victim was in pain and told her to go and check the victim. When victim's mother arrived at aunt's house, victim was crying in pain. She noticed visible scratches on vagina. Victim informed that her uncle Kalaveti Ratu poked his finger in her vagina.
5. In the caution interview conducted by police you admitted penetrating victim's vagina three times and kissing her cheek more than once.
6. The maximum penalty for Rape is life imprisonment.
7. Tariff for juvenile rape is 10-16 years' imprisonment. (Anand Abhay Raj CAV003.2014)
8. The maximum sentence for Indecent Assault is 5 years imprisonment. In Rokota v The State [2002] FJHC 168; HAA0068J.2002S (23 August 2002) Shameem J observed:

"Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty which saves the victim the trauma of giving evidence.

9. In sentencing offenders, the Courts must have regard to the Constitution of Republic of Fiji and its proportionality principle in sentencing. Within that constitutional framework, Section 4 of the Sentencing and Penalties Act 2009 requires the courts to have regard to the maximum penalty prescribed for the offence and current sentencing practice and applicable guidelines issued by the courts. The courts are also required to consider the seriousness of the offending and the impact or harm caused to the victim in selecting the starting point of the sentence.
10. The courts of the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is one of the most serious forms of sexual violence and that rapists will be dealt with severely. The courts have underscored that children are vulnerable members of our society. They are entitled to live their lives free from any form of physical or emotional abuse. They are entitled to trust their family member to protect them and keep them safe from sexual violence. When family members sexually abuse children, violating the Domestic Violence Act, they should expect condign punishment to mark the society's outrage and denunciation against sexual abuse of children. The courts have also emphasized that the increasing prevalence of such offending in the community calls for deterrent sentences.
11. By prescribing life imprisonment for Rape, the law makers expect the courts to impose harsher punishment on rape offenders. 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.
12. The main purposes of your sentence are deterrence and denunciation.
13. You selected a child of tender age to satisfy your lustful demands. The offending is very serious. Having considered the seriousness of the offence and the harm caused to the young victim, I pick 11 years' imprisonment as the starting point for the first (Rape) count.

14. **Aggravating Circumstances**

- The victim came to your house trusting you as her elderly uncle. You breached that trust.
- Complainant was 4 years of age when the offence was committed. You were a 74 -year old mature person at that time. The age gap between you and the victim is 70 years.
- The victim suffered pain and injuries. According to the Victim Impact Statement, the victim has suffered emotionally and psychologically.
- You exploited vulnerability of the victim and exposed the innocent mind of a young child to sexual activity.

15. **Mitigating Circumstances**

- You admitted the offences at the police interview and co-operated with police.
- You are a first offender and have maintained a clear record thus far.
- You seek leniency of this court.

16. You have not saved the young victim from giving evidence and reliving the ordeal. You will not get any discount in view of your lack of remorse.

17. You are a 77 year-old first offender. It is unfortunate that you have committed this offence at your twilight age. In mitigating your sentence, I have considered your personal circumstances and character references filed by your Counsel.

18. I add 2 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 13 years' imprisonment for the first count. I

deduct 1 year for mitigating factors bringing the sentence to one of 12 years' imprisonment.

19. You had been in remand for approximately 2 months. I further deduct 2 months to reflect your remand period. Your final sentence is 11 years and 10 months imprisonment.

20. Having considered the same aggravating and mitigating factors mentioned above, I impose a sentence of 2 years' imprisonment for the second count of Indecent Assault.

21. I, acting under Section 18(1) of the Sentencing and Penalties Act, order that you are eligible for parole after serving an imprisonment term of 10 years.

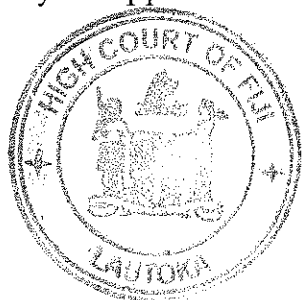
22. **Summary**

1st count (Rape) - 11 years and 10 months' imprisonment

2nd count (Indecent Assault) - 2 years' imprisonment

Accordingly, you are sentenced to 11 years and 10 months imprisonment for the 1st count to be served concurrently with the sentence for the 2nd count with a non-parole period of 10 years.

23. 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge

Judge

At Lautoka

16th November, 2018

Counsel:

- **Office of the Director of Public Prosecution for State**
- **Legal Aid Commission for Accused**