

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 139 of 2017

STATE

v.

WAISEA DOBUI

Counsel: Ms. L. Bogitini for State
Ms. K. Boseiwaqa, Ms. M. Ratidara for Respondent

Date of Hearing: 20th to 22nd March 2018

Date of Summing Up: 26th March 2018

Date of Judgment: 26th March 2018

Date of Sentence: 27th March 2018

SENTENCE

1. The name of the Complainant is suppressed.
2. You are found guilty and convicted by this court for four counts of Rape, contrary to Section 207 (1), (2) (b) and (3) of the Crimes Act, which carries a maximum sentence of life imprisonment, and one count of Sexual Assault, contrary to Section 210 (1) (a), which carries a maximum sentence of ten years imprisonment.
3. It was proved at the conclusion of the hearing that you penetrated the vagina of the Complainant with your tongue on three different occasions on the 17th of March, 24th of March and 13th of April 2017. On the 24th of March 2017, you have unlawfully and indecently rubbed your penis on the anus of the Complainant. It was further proved that you have penetrated the vagina of the Complainant with your finger on the 13th of April 2017. The Complainant was twelve years old at the time of these incidents took place. She is your step-daughter.

4. This is a case of sexually exploitation of a young child by a close and elderly family member within her own family environment. Young children are the most vulnerable victims of sexual assault of this nature. Such sexual exploitation of children by the family member has become a social menace in this country, which requires a more constructive and affective intervention of the law enforcement authorities, including the Court of Law. Therefore, I find this offending is a very serious 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 Abhav Raj [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 Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012) has expounded that 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)

- a) *Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.*

Category 2

- a) *Contact between the naked genitalia of the offender and another part of the victim's body;*
b) *Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
c) *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

- a) *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 twelve years old at that time. Undoubtedly, a crime of this nature adversely affects the child both psychologically and socially. Because of this incident, the Complainant had to move away from her family and the village. She now lives with her grandparents. Hence, I find the level of harm is substantially high in this crime.
9. You have committed these series of shameful crimes on the Complainant when she was alone at home. You found the opportunity when she was alone with no prospect of resist or escape, in order to unleash your venom sexual gratification on her. You then threatened her that you will do something to her, if she tells anyone about these incidents. I accordingly find the decree 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 each of the four counts of Rape and two (2) years for the count of Sexual Assault.

11. You have blatantly breached the trust reposed in you by the Complainant as her step-father. The age difference between you and the Complainant was substantially high at the time of this crime took place. By committing this crime, you have denied the Complainant, her natural growth in life. I consider these factors as aggravating circumstances of this crime.
12. You are a first offender. Therefore, you are entitled for a substantive discount for your previous good behaviours pursuant to Section 4 (2) of the Sentencing and Penalties Act.
13. The learned Counsel for the defence submitted in your mitigation about your personal and family circumstances. However, such family and personal mitigations have very minimal mitigatory value. Accordingly, I do not find any mitigating factor in your favour apart from your previous good behaviours.
14. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of fifteen (15) years for each of the four counts of rape and five (5) years for the Sexual Assault. I reduce one (1) year for your previous good character. Your final sentence for each of the four counts of Rape has now reached to fourteen (14) years of imprisonment. The final sentence for the sexual assault has reached to four (4) years of imprisonment.
15. Having considered the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find twelve (12) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of twelve (12) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

16. Accordingly, I sentence you for a **period of fourteen (14) years imprisonment** for each of the four counts of Rape, contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act and for a **period of four (4) years imprisonment** for the offence of Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act. All these sentences to be

served concurrently. Further, I order that you are not eligible for any parole for a period of **twelve (12) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of The Sentence

17. You have been in remand custody for this case for a period of four (4) months and nine (09) days 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 five (5) months as a period of imprisonment that have already been served by you.
18. Accordingly, the actual sentencing period is **thirteen (13) years and seven (7) months** imprisonment with non-parole period of **eleven (11) years and seven (7) months**.
19. 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 you 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.
20. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
27th March 2018

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Respondent.