

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LABASA

CRIMINAL CASE NO. HAC 36 of 2017

BETWEEN : STATE

AND : ELIKI BUTADROKA

Before : Hon Mr Justice Daniel Goundar

Counsel : Ms A Vavadakua for the State
Mr V Tuicolo for the Accused

Date of Hearing : 16 March 2018

Date of Sentence : 3 April 2018

SENTENCE

[1] Eliki Butadroka, on 15 March 2018, you freely and voluntarily pleaded guilty to one count of sexual assault and two counts of digital rape. The charges arose in July 2016 at Navukebuli Village. The victim was sexually abused when she came to your village with her parents to attend her grandfather's funeral. At the time, she was 12 years old. You were 19 years old. There is no relationship between you and the victim but it appears that you developed a friendship with her when she was in your village. You lured her into the bushes and removed her skirt and underwear. You kissed the victim on the lips (count 1). You penetrated her vagina with your tongue (count 2). You penetrated her mouth with your penis (alternative count to the third count). You admitted to these sexual acts. Since the victim was under the age of 13 years, she was incapable of giving a valid consent. You are represented by counsel. Your guilty pleas

are competent and informed. You are convicted as charged. I now pronounce your sentence.

- [2] In assessing the seriousness of the offences, I have borne in mind the maximum punishment prescribed by law for each offence. The maximum penalty for sexual assault is 10 years imprisonment. The tariff is 2 to 8 years' imprisonment, depending on the gravity of the actual act committed by the accused (*State v Baravilala* [2016] FJHC 679; HAC49.2016 (27 July 2016)). The act of kissing is on the lower end of the seriousness and is tantamount to an indecent assault.
- [3] The maximum penalty prescribed for rape is life imprisonment. The tariff for rape of a child or a juvenile girl is 10 to 16 years' imprisonment (*Raj v State* [2014] FJSC 12; CAV0003.2014 (20 August 2014). In *Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015), the Supreme Court said at [21]:

The casting of the offence of rape in the Crimes Decree is such that no distinctions are drawn as to gravity of offending dependent on the object used to penetrate or of the orifice of the victim penetrated. No separate penalties are prescribed. Sufficient no doubt is the unwanted invasion, the violation of the person, the forcible intrusion into the privacy and body of another. (per Gates CJ)

- [4] In *State v Vatu* [2015] FJHC 263; HAC231.2011 (23 April 2015), an 18-year old accused was convicted of two counts of lingual rape of a 4-year old girl after early guilty pleas. Madigan J sentenced the accused to 7 years imprisonment with a non-parole period of 5 years for the following reasons at [7]:

It appears to be extremely important in this case that a balance be struck between expectations of the community that such activity be punished and retribution be afforded the victim with the need to recognize the folly of such a young man with a clean record and the destruction that a long sentence would wreak on his entry into adulthood. Whilst every attempt must be made to keep a young

offender from prison and to rehabilitate him (her) when faced with a serious crime or crimes, a Court must act in the interests of the public and their expectations and act to deter others who might want to follow the same course of action.

- [5] In *State v Tokatokavanua* [2015] FJHC 656; HAC66.2015 (8 September 2015), an 18-year old offender pleaded guilty to anal rape of a 9-year old boy. Aluthge J sentenced the offender to 7 years imprisonment with a non-parole period of 3 years.
- [6] In assessing the seriousness of your actual acts, I take into account that you did not use any form of force or physical violence on the victim. You are now 21 years old and earn a living as a fisherman. You have previous good character, which is a mitigating factor. The most compelling mitigating factor is your guilty plea. You pleaded guilty to the charges before the case was listed for trial. You have relieved the victim, who is a child from the further trauma of giving evidence in court. You have also saved court time and resources. Your expression of remorse is genuine. You have spent time in custody while on remand for twelve days. I give significant weight to your early guilty pleas, expression of remorse, previous good character and young age.
- [7] The aggravating factors are that the victim was a child and that she trusted you to accompany her around the village when she was attending her grandfather's funeral. You exploited her vulnerability and trust by sexually violating her. The courts have a duty to protect young girls from any form of sexual abuse by denouncing such conduct. The purposes of your sentence are to denounce your conduct and deter others from sexually abusing juvenile girls.
- [8] Taking all these factors into account, I sentence you to 6 months' imprisonment for sexual assault and 8 years' imprisonment for each count of rape, to be served concurrently. I decline to fix a non-parole period. I now give reasons why I have sentenced you below the normal range of 10-16 years' imprisonment and without a non-parole period. You were relatively young, 19 years old, when you committed the offence. You are a first time offender. The offence you committed did not involve use

offender from prison and to rehabilitate him (her) when faced with a serious crime or crimes, a Court must act in the interests of the public and their expectations and act to deter others who might want to follow the same course of action.

- [5] In *State v Tokatokavanua* [2015] FJHC 656; HAC66.2015 (8 September 2015), an 18-year old offender pleaded guilty to anal rape of a 9-year old boy. Aluthge J sentenced the offender to 7 years imprisonment with a non-parole period of 3 years.
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- [7] The aggravating factors are that the victim was a child and that she trusted you to accompany her around the village when she was attending her grandfather's funeral. You exploited her vulnerability and trust by sexually violating her. The courts have a duty to protect young girls from any form of sexual abuse by denouncing such conduct. The purposes of your sentence are to denounce your conduct and deter others from sexually abusing juvenile girls.
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of threats or physical violence. You have taken responsibility for your conduct and are genuinely remorseful. In these special circumstances, it is justified to accord you with an opportunity to rehabilitate while serving your imprisonment sentence. I refer you for counselling by Empower Pacific, Labasa. The Office of the Legal Aid Commission is to assist Empower Pacific in the facilitation of counselling of the offender.

- [9] I refer the victim for counselling by Medical Services Pacific, Labasa. The Office of the Director of Public Prosecutions is to assist Medical Services Pacific in the facilitation of counselling of the victim.



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Hon. Mr Justice Daniel Goundar

Solicitors:

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