

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 137 of 2017

STATE

v.

SOLOMONE DAUNAKAMAKAMA

Counsel: Ms. S Serukai for State
Ms. L. Ratidara with Mr E. Radio for Accused

Date of Hearing: 9th, 11th and 12th April 2018

Date of Summing Up: 16th April 2018

Date of Judgment: 17th April 2018

Date of Sentence: 18th April 2018

SENTENCE

1. The names of the two Complainants are suppressed.
2. You are found guilty and convicted by this court, for one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act and three counts of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, which carries a maximum sentence of life imprisonment.
3. It was proved at the conclusion of the hearing, that you had penetrated the vagina of the first Complainant with your penis on the 26th of March 2017 at your home. She was twelve years old at that time. The first Complainant had come to clean your house. You then took her into the room and committed this crime on her.

4. It was further proved that you had penetrated the vulva of the second Complainant with your finger on three separate occasions, on the 3rd of December 2016, 10th of December 2016 and 18th of December 2016. You are known to the two Complainants as they call you as grandfather Solo. They used to come to your place asking for food, which you have provided them initially.
5. Rape is the worst form of sexual abuse. It becomes more serious when it is involved with a child. In this case, the two Complainants were sexually abused by a person who is known to them. This form of sexual exploitation of children by the known adult is a serious offence. Therefore, it requires a more constructive and effective intervention of the law enforcement authorities, including the Court of Law in order to protect the children from this monsters phenomenon. Therefore, I find this offending is a very serious crime.
6. 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.

Tariff

7. 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.
8. The first Complainant was twelve years old and the second Complainant was ten years old at the time of these offences were committed. According to the respective victim impact reports of the Complainants, they find difficulties in trusting people after these incidents. The first Complainant has to change her place of residence, as she now stays at a Children's home away from her parent. Accordingly, I find the level of harm is substantially high in this crime.

9. You have executed these shameful crimes on the Complainants when they were alone and had no prospect of escaping or seeking help. They have come to your house in order to prepare the house for church services. You have threatened them that you will kill them if they tell anyone else. 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 each as the starting point for each of these four counts.
11. You have blatantly breached the trust reposed in you by the two Complainants. They trusted you as they always visited your place and asked for food whenever they wanted. You have manipulatively abused that trust in order to satisfy your lustful sexual gratification. The age difference between you and the two Complainants were significantly high at the time of these crimes took place. By committing this crime, you have denied them to have normal and natural growth in their lives. 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.
14. You are eighty three (83) years old. Justice Shameem in **Rokota v The State [2002] FJHC 168; HAA0068J.2002S (23 August 2002)** held that:

"A Recognition of age as a mitigating factor does not mean that imprisonment should never be imposed on elderly offenders, and the Court has upheld sentences of imprisonment on men in their seventies. It is however a long-established principle that a sentence should normally be shortened so as to avoid the possibility that the offender will not live to be released."

15. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of fifteen (15) years each for each of the four counts of rape. I reduce two (2) year for your long standing previous good character. I further reduce two (2) years for your advance age. Your final sentence for each of the four counts of rape has now reached to eleven (11) years of imprisonment.
16. Having considered the seriousness of this crime, the purpose of this sentence, your advance age and opportunities for rehabilitation, I find six (6) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of six (6) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

17. Accordingly, I sentence you as follows:
 - i) **Eleven (11) years imprisonment** for the first count of Rape, Contrary to Section 207 (1) and (2) (a) of the Crimes Act,
 - ii) **Eleven (11) years imprisonment** for the second count of Rape, Contrary to Section 207 (1) and (2) (b) of the Crimes Act,
 - iii) **Eleven (11) years imprisonment** for the third count of Rape, Contrary to Section 207 (1) and (2) (b) of the Crimes Act,
 - iv) **Eleven (11) years imprisonment** for the fourth count of Rape, Contrary to Section 207 (1) and (2) (b) of the Crimes Act,
18. All the sentences to be served concurrently. Further, I order that you are not eligible for any parole for a period of **six (6) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of The Sentence

19. You have been in remand in custody for this case for a period of fifty six (56) 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 **two (2) months** as a period of imprisonment that have already been served by you.
20. Accordingly, the actual sentencing period is **ten (10) years and ten (10) month** imprisonment with non-parole period of **five (5) years and ten (10) months**.
21. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
18th April 2018

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