

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 301 of 2017

STATE

v.

WAISAKE TURAGA

Counsel: Mr T. Tuenuku for State
Ms. S. Prakash for Respondent

Date of Hearing: 28th to 29th May 2018

Date of Summing Up: 30th May 2018

Date of Judgment: 31st May 2018

Date of Sentence: 31st May 2018

SENTENCE

1. The name of the Complainant is 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, which carries a maximum sentence of life imprisonment.
3. It was proved at the conclusion of the hearing, that you had lured the complainant into your house under the pretext of seeking her assistance to recharge the credit into your mobile phone. You then closed the door and windows of the house and dragged her into the bedroom. You then forcibly penetrated into her vagina with your penis.

4. Rape is the worst form of sexual abuse. It becomes more serious when it is involved with a young juvenile. The complainant was seventeen years old at the time this offence took place. You are known to the complainant as her uncle. She is your niece. This form of sexual exploitation of children by a 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.
5. Having taken into consideration the serious nature 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

6. 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.
7. The complainant was seventeen years at the time of this offence was committed. According to the victim impact report of the complainant, she now finds difficulties in dealing with people, specially with her school mates, after this incident. Accordingly, I find the level of harm is substantially high in this crime.
8. You have executed this shameful crime on the complainant when she came to your house to buy an ice block. You then deceitfully invited her into your house, pretending that you need her assistance to recharge your mobile phone. You then forcefully dragged her into the bedroom. You covered her mouth with your hand, preventing her to shout for help. She was alone and had no prospect of escaping from the room. Having committed this disgraceful crime on her, you threatened her that you will do

something worst to her, if she tells anyone about this incident. You then gave her a mobile phone to use.

9. Accordingly, I find that you have properly planned and executed this crime when the complainant was in a vulnerable situation, where she has no prospect of escaping or seeking help from outside. You have used substantial amount of force both physically and psychologically on the complainant in order to execute and also to conceal this crime. 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 as the starting point.
11. You have blatantly breached the trust reposed in you by the complainant. She has trusted you as her uncle. With that trust, she came into your house when you asked her help to recharge your mobile phone. However, you had other plans. You have manipulatively abused that trust in order to satisfy your lustful sexual desire. The age difference between you and the Complainant was significantly high at the time of this crime took place. By committing this crime, you have denied the complainant to have a normal and natural growth through her young adulthood. I consider these factors as aggravating circumstances of this crime.
12. You are not a first offender. However, the last conviction against you has been recorded in 1991. You have been away from troubles since 1991. Therefore, you are entitled for a substantive discount for your good behaviour over the last twenty seven (27) years, 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. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of fifteen (15) years. I reduce two (2) years for your

previous good character. Your final sentence has now reached to thirteen (13) years of imprisonment.

15. Having considered the seriousness of this crime, the purpose of this sentence, your age, family circumstances and opportunities for rehabilitation, I find eleven (11) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

16. Accordingly, I sentence you for a **period of thirteen (13) years imprisonment** for the offence of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. Further, I order that you are not eligible for any parole for a period of eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

17. **Actual Period of The Sentence**

18. You have been in remand in custody for this case for a period of three (3) months and twenty one (21) 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 **four (4) months** as a period of imprisonment that have already been served by you.

19. Accordingly, the actual sentencing period is **twelve (12) years and eight (8) months** imprisonment with non-parole period of **ten (10) years and eight (8) months**.

20. 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.

21. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
31st May 2018

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