

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 058 of 2018

BETWEEN: STATE

PROSECUTION

AND: WAISIKI LIGALOA

ACCUSED PERSON

Counsel: Ms. K. Semisi for State
Ms. N. Mishra for Accused

Sentence: 04th July 2018

S E N T E N C E

1. The name of the complainant is suppressed.
2. Mr. Waisiki Ligaloa, you have been charged with two counts of Rape, contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act, which carries a maximum penalty of life imprisonment and one count of Rape, contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act, which carries a maximum penalty of life imprisonment. The particulars of the offences are that:

FIRST COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

WAISIKI LIGALOA on the 9th day of December 2017 at Nasinu in the Central Division had carnal knowledge of **LS**, a child under the age of 13 years.

SECOND COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009

Particulars of Offence

WAISIKI LAGILOA on the 9th day of December 2017 at Nasinu in the Central Division, on an occasion after that mentioned in Count 1, had carnal knowledge of **LS**, a child under the age of 13 years.

THIRD COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Act 2009

Particulars of Offence

WAISIKI LAGILOA on the 9th day of December 2017 at Nasinu in the Central Division, penetrated the mouth of **LS**, a child under the age of 13 years, with his penis.

3. You pleaded guilty for these offences on the 27th of June 2018. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I convicted you for each of the three counts as charged.
4. It was revealed by the summary of facts, which you admitted in court, that you have entered into the house of the Complainant in the night of 9th of December 2017 around 10 p.m, while the members of his family were away. The complainant was ten years old at that time. His brother had gone to nearby house to download movies and father

had gone to drop his mother to a neighbour's house. You came and knocked the front door. When the Complainant came to open it, you pushed the door, pushing the Complainant to the floor. When the Complainant tried to scream for help, you have threatened him to be quiet, otherwise you would punch him. You have then dragged the Complainant into the bedroom and threw him onto the bed. You have then removed the clothes of the Complainant, including his undergarments. Having done so, you have removed your pants and inserted your penis into the anus of the Complainant. After doing this for a while, you have made the Complainant to sit on top of you and inserted your penis into his anus again. Afterward, you have forcefully inserted your penis into the mouth of the Complainant.

5. Rape is the worst form of sexual abuse. It becomes more serious when it is involved with a juvenile. The Complainant was ten years old at the time this offence took place. You are known to the Complainant as a neighbour.
6. 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

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 Complainant was ten years old at the time of this offence was committed. Undoubtedly, offence of this nature could cause enduring and lasting adverse psychological scars in the life of the victim. The victim impact report states that the Complainant is having difficulties in getting back to his normal life after this incident. It has adversely affected the personality of this young Complainant. Accordingly, I find the level of harm in this offending is substantially high.

9. You have executed this shameful crime on the Complainant when he was alone at his home, while his parents and the brother were away. You forcefully entered into the house by pushing him away and you then dragged him to the bedroom. You had threatened him that you would punch him if he shouts for help. Accordingly, I find that you have properly planned and executed this crime when the Complainant was in a vulnerable situation, where he 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 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 thirteen (13) years as the starting point.
11. You have blatantly breached the trust reposed in you by the Complainant as an adult neighbour. The age difference between you and the Complainant is nine years, which is substantially high. By committing this crime, you have not only invaded into his childhood, but also denied the Complainant to have a normal and natural growth in his childhood. 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 good behaviour, 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 pleaded not guilty for these offences on the 15th of March 2018. Subsequent to several adjournments, you indicated that you have changed your position. Accordingly, you pleaded guilty for these offences on the 27th of June 2018. Hence, you are entitled for a substantive discount for your plea of guilty, though it was not at the first available opportunity.

15. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of sixteen (16) years. I reduce two (2) years for your previous good character. I reduce further three (3) years for your early plea of guilty. Your final sentence has now reached to eleven (11) years of imprisonment for each of the three counts.
16. Having considered the seriousness of this crime, the purpose of this sentence, your age, family circumstances and opportunities for rehabilitation, I find nine (9) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of nine (9) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

17. Accordingly, I sentence you as follows:

1st Count - Eleven (11) years of imprisonment period.

2nd Count - Eleven (11) years of imprisonment period.

3rd Count - Eleven (11) years of imprisonment period.

All the sentences to be served concurrently. Further, I order that you are not eligible for any parole for a period of nine (9) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of The Sentence

18. You have been in remand custody for this case for a period of nearly six (6) months 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 **six (6) months** as a period of imprisonment that have already been served by you.
19. Accordingly, the actual sentencing period is **ten (10) years and six (6) months** imprisonment with non-parole period of **eight (8) years and six (6) months**.

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




R.D.R.T. Rajasinghe
Judge

At Suva
04th July 2018

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