

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 42 of 2018
[Magistrates' Court Criminal Case No. 230 of 2018 LAB]

BETWEEN : STATE

AND : JONE SILINAUCA

Counsel : Ms D Kumar for the State
Ms K Boseiwaqa for the Accused

Date of Hearing : 27 August 2018
Date of Sentence : 4 September 2018

SENTENCE

[1] Jone Silinauca, you pleaded guilty to a charge of rape after your application for bail was refused on 27 August 2018. Since you were unrepresented, the case was stood down for you to consult a lawyer from the Legal Aid Commission for legal advice. When the Court reconvened Ms Boseiwaqa appeared for you as a duty solicitor and advised the Court that you maintained your guilty plea. Facts tendered by the prosecution and admitted by you support the charge of rape. Your guilty plea is informed and unambiguous. You are convicted as charged.

[2] The victim is your biological daughter. She was 14 years of age and a student at the time of the offending. The incident occurred at your home when your wife was away attending a fundraising function in your settlement on 31 December 2017. After shower the victim had gone to bed. You entered her room and removed her clothes. You performed oral sex and then went on top of her. You had sexual intercourse with

her for a few minutes. She struggled but you were too strong for her. You remained in the room and after about 25 minutes, you had sexual intercourse with the victim for the second time. She endured a lot of pain during the sexual intercourse. She suffered in silence until you left the room.

- [3] Apart from raping your daughter you admitted having sexual inclination towards her in the past. There were instances of stroking of breasts and buttocks or peeping into the bathroom when the victim was bathing. Some of these instances were witnessed by your wife. She even admonished you on a few occasions but you responded by saying you were playing.
- [4] In May 2018, your wife suspected that the victim was pregnant. She took her to a health clinic. It was discovered that the victim was 5 months pregnant. She revealed that you impregnated her. It was too late to terminate the pregnancy. She has continued with the pregnancy. As a result, she had to be taken out of school. She is about to give birth. It is not in dispute that you are the father of the child to be born to your daughter. The High Court, Family Division will determine the custody issue once the child is born.
- [5] You are 42 years old and married with six children. The victim is your eldest child. The youngest is 3 months old. Your wife and children are depended on you for their livelihood. You have been supporting your family through farming. You are a first offender and you are seeking clemency from the court. You said you have apologized to your daughter but there is no confirmation of that apology.
- [6] The maximum penalty prescribed for rape is life imprisonment. The tariff for rape of a child is from 10 to 16 years imprisonment. In worst cases, sentences outside this tariff could be imposed.

- [7] I give you a discount of three years for your early guilty plea, expression of remorse, relieving the victim from the trauma of giving evidence and saving the court time and resources. I also give you some credit for your previous good character. The consequences of your crime on your family have no mitigating value. You are the author of their predicament.
- [8] Your remand period is about 5 months. I make a downward adjustment to your sentence to reflect this period.
- [9] I consider the following as the aggravating factors:
- Gross breach of your daughter's trust.
 - Other sexual indecency such as oral sex was performed on the victim.
 - The victim was impregnated.
 - Vulnerability of the victim as a female child in a patriarchal home.
 - The victim was forced out of school due to her pregnancy.
 - Humiliation and psychological impact of the crime on the victim.
- [10] Your conduct towards your daughter must be denounced in the strongest term. You were responsible to protect her from abuse and sexual violence. Instead you used her as an object of your lust. You raped her at the age of 14, impregnated her and destroyed not only her body but her soul. The primary purpose of your sentence is to deter you and others from this kind of deviant sexual behaviour.
- [11] I sentence you to 12 years' imprisonment with a non-parole period of 10 years.
- [12] I direct the Department of Social Welfare to attend to the welfare of the victim and the child to be born. Your spouse may also seek assistance from the Department of Social Welfare for support while you are in prison serving this sentence.

[13] A permanent domestic violence restraining order with standard non-molestation conditions is issued for the safety and wellbeing of the victim. This order will remain in place until further order from the High Court, Family Division.



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Hon. Mr Justice Daniel Goundar

Solicitors:

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

