

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 61 of 2018

STATE

v

FILIPE KOROI

Counsel : Mrs. A. Vavadakua for the State
Mr. J. Koroti with Ms.M. Tuiloma (L.A.C.) for the
Accused

Dates of Trial : 19 and 20 March 2019

Date of Judgment : 21 March 2019

Date of Sentence : 22 March 2019

SENTENCE

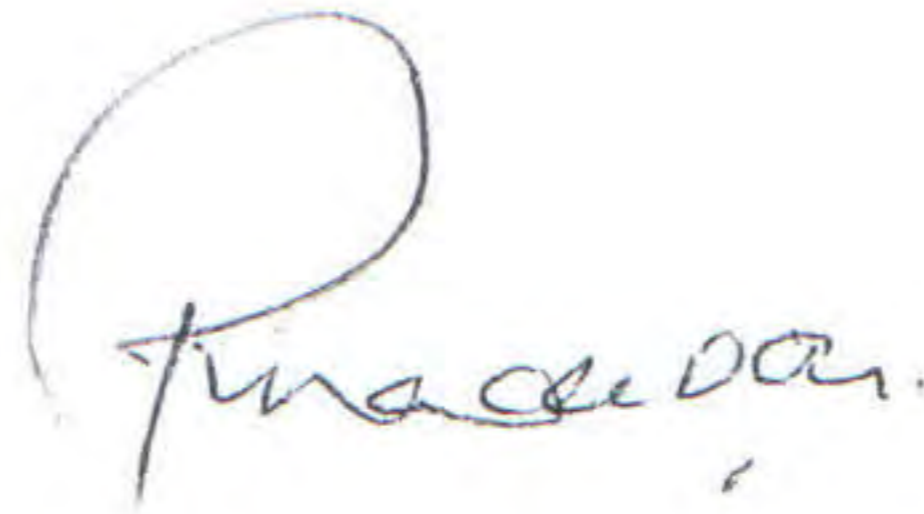
1. The accused in this case has been convicted of rape. The evidence at trial was that on the 18th July 2018, in a very remote village in Cakaudrove, he, aged 18, raped his 6 year old male cousin. They both lived in the same village and after dinner on the evening in question, the boy's mother had left them alone. They were both on the boy's bed when the assault happened.

2. The 6 year old gave evidence to the Court and it was heart breaking to observe the distress and shock that he still appears to be displaying. Although it is the accused's Constitutional right to defend himself against a serious charge of rape, it is always unfortunate when a child victim, especially one of this age, has to be put through the ordeal of a trial. This ordeal was compounded and seriously aggravated for these purposes of sentence when the defence mounted by the accused was that this 6 year old instigated the sexual encounter and maneuvered himself to enable the rape to be effected. This court dismissed that defence as absurd and impossible.
3. The Supreme Court has in the case of Aitcheson CAV0012 of 2018 decided that the rape of a juvenile must attract a sentence of between 11 and 20 years. All of the higher courts in Fiji have expressed their alarm and concern for what appears to be an unprecedented prevalence of sexual abuse of the nation's children and tragically effected in many cases by relatives of the victims.
4. Society is losing its patience with this abhorrent situation and expects such perpetrators to be punished severely within the heavy range of terms of imprisonment mandated by the Supreme Court. To this expectation a sentence must too recognize the youth and previous good character of the offender. Striking such a balance is not an easy exercise for the sentencing Court.
5. The accused is 18 and single and has a clear record. He is a yaqona farmer earning \$900 per week which he uses to support his elderly parents and brother.

6. The aggravating features of this case include his shocking abuse of trust when his young cousin was entrusted to his care in the absence of the mother. It is also an aggravation that he attempted to defend himself by blaming the child for instigating and physically enabling the offence, a defence that is impossible to believe. It is beyond imagination that a 6 year old boy would have lustful desires that would embolden him to stimulate a well-built 18 year old into such sexual activity.
7. I take a starting point for this offence at 12 years imprisonment. For the aggravating features referred to above, I add a further term of 5 years imprisonment to that starting point.
8. For his hitherto clear record I deduct 2 years and for his limited family mitigation and for the time already spent in custody awaiting trial, I deduct 1 year leading to a total term of imprisonment of 14 years imprisonment.
9. The abhorrence of the community for this sexual abuse of a 6 year old far outweighs the encouragement of Fiji's sentencing guidelines to have regard to the rehabilitation of a young offender and the need to protect such a young offender from the perceived perversion of a prison environment. However in recognition of the accused's young age I further reduce the sentence to a term of 12 years imprisonment and I order that he serve a minimum of 10 years before he be eligible for parole.
10. In addition I put in place a Domestic Violence Restraining Order with the accused as perpetrator and the victim as the protected person, such order to remain in effect until further order of the High Court.

Orders

1. The accused is sentenced to a term of imprisonment of 12 years.
2. He is to serve 10 years of that sentence before he be eligible for parole.
3. A domestic violence restraining order is to be effected with the accused as perpetrator and the 6 year old victim as the protected person.



P. K. Madigan

Judge

At Labasa

22 March 2019

