

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

Criminal Case No.: HAC 17 of 2018

BETWEEN : STATE

AND : KAONDIDO TUTARA

Counsel : Ms D. Rao for the State
Ms M. Tuiloma and Ms K. Boseiwaqa for the Accused

Dates of Hearing : 13 - 15 May 2019

Date of Summing Up: 17 May 2019

Date of Judgment : 20 May 2019

Date of Sentence : 20 May 2019

SENTENCE

[1] This is another case where a child was raped by a family member. This time the victim and the Accused are from the Banaban community. The victim is a 15-year old girl. The Accused is a 48-year old adult male. He is her maternal uncle – mother's brother.

[2] The incidents of rape occurred when the victim came from Rabi to live with the Accused and his family for schooling in Labasa after her father's death. She was a Year 8 student when the Accused started to sexually abuse her. The abuse continued for almost nine months until the victim confided in a school friend. That is how the sexual abuse came to light. The victim was removed from the care of the Accused and was placed in a foster home in Savusavu.

- [3] Following a trial, the Accused was convicted of four representative counts of rape. His defence at the trial was that his 15-year old niece had consensual sex with him on all the alleged occasions. It was also put to the child victim that she was the initiator of the sexual acts.
- [4] The victim's evidence was that she did not consent and said no to the Accused on every occasion he approached her for sex. He did not listen. She did not resist because of fear of being disbelieved by her family. She did not report because of his threats to assault and chase her away from his home. She lived in an environment of fear and vulnerability.
- [5] The maximum punishment that this Court can impose for rape is life imprisonment. For the tariff, I am guided by the decisions in *Raj v State* [2014] FJSC 12; CAV0003.2014 (20 August 2014); *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018). But I am mindful the tariff is a guide only. The sentence will depend on all the circumstances of the case.
- [6] In the present case, a juvenile girl was raped in a home by her uncle who also was her guardian. The victim was extremely vulnerable. She was a female. She was a child. Her father had passed away. She came to Labasa for schooling. Labasa was an unfamiliar environment for her. She was born and raised on Rabi. She was placed under the care of her uncle, the Accused. Her trust was betrayed when she was sexually abused. Threats of assault followed to prevent her from reporting the abuse. The abuse was repeated and prolonged. One of the incidents of rape was witnessed by another child. That child was exposed to a crime. The physical and the emotional harm done to the victim are severe. She now lives in a foster home. All these factors significantly aggravate the offending.
- [7] There is very little evidence of remorse from the Accused. He comes from a socio-economic disadvantaged background. He received little formal education and has always worked as a casual labourer in farms. With whatever little he earned in wages, he supported his family. He is married with a young child. The only mitigating factor is his previous good character, for which I give him credit in sentence.

- [8] The purposes of sentence in this case are to denounce the conduct of the Accused and to deter him and others. The sentence must represent the community's disapproval of sexual abuse of children. Children are vulnerable members of our community. When a child is raped in a home by a family member, the community expects the courts to impose condign punishment on the offender.
- [9] For each count of rape, the Accused is sentenced to 16 years' imprisonment, to be served concurrently. The total sentence is 16 years' imprisonment. The remand period is about 15 months. I take this period into account and fix a term of 11 years for the Accused to serve before eligible for parole.
- [10] To protect the victim, I order that the Accused be subject to a permanent domestic violence restraining order with no contact and non-molestation conditions.



A handwritten signature in blue ink, consisting of stylized initials and a long horizontal stroke.

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Hon. Mr Justice Daniel Goundar

Solicitors:

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