

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 89 of 2018

[CRIMINAL JURISDICTION]

STATE

V

LINO FER EI

Counsel : Ms. S. Kiran and Ms. S. Sharma for the State
Ms. L. Vaurasi and Mr. V. Seduadua for Accused

Hearing on : 27- 31 May 2019

Summing up on : 03 June 2019

Judgment on : 03 June 2019

Sentenced on : 05 June 2019

SENTENCE

1. Lino Ferei, you were charged by the Director of Public Prosecutions for the following offence;

Statement of Offence

Rape: contrary to section 207(1) and (2)(a) of the Crimes Act of 2009.

Particulars of Offence

LINO FER EI on the 20th day of February, 2018 at Nasinu, in the Central Division penetrated the vagina of MAKI RAIJELI SOSEFO by inserting his finger into the vagina of MAKI RAIJELI SOSEFO, without her consent.

2. After trial the assessors unanimously opined that you are guilty as charged and I concurred with their opinion. Accordingly, you stand convicted of one count of rape.
3. The maximum sentence for the offence of rape in terms of section 207 of the Crimes Act 2009 is imprisonment for life. It is settled that the sentencing tariff for rape of an adult victim is a term of imprisonment between 7 years and 15 years. (*State v Naicker* [2015] FJHC 537; HAC279.2013)
4. The victim is related to you. She is your cousin sister who is older than you. You were 20 years old and the victim was 28 years at the time you committed the offence. At the time she was living in your house under your father's care. On 20/02/18, after everyone else left the house in the morning, you went to the room she was sleeping. You then removed the pants the victim was wearing and you inserted your finger inside her vagina. You moved your finger inside her vagina in an attempt to arouse her. When the victim pushed you, you pushed her back and you continued to penetrate her vagina. The victim cried looking at the wall. After about 15 to 20 minutes, you took your finger out and left her room.
5. The prosecution has taken steps to submit a victim impact statement. The author, under the heading '*Emotional and/or psychological effects*' states thus;

"The counselling sessions I had with Maki showed that the incident had traumatized her and also she suffered from flashbacks. These flashbacks would cause her to suddenly breakdown and cry.

Moreover, during our initial counselling session, I noticed that her hands as well as her voice trembled as she spoke about the ordeal.

In addition, the incident had happened in a place that she had considered safe and had trusted the occupants of the home; she now has trust issues and is very cautious of her surroundings."

6. Then again, under the heading 'Life Changes', it is stated in the said statement thus;

"The incident had caused Maki to have a change in sleep patterns. Previously she would sleep through the night, however after the incident, she would wake up suddenly due to fear and switch her light on.

Moreover, the incident has caused Maki great anger and sadness as the alleged perpetrator is named after the grandfather who raised her as a child and has passed away. Due to this, it has tarnished the fond memories she has of her grandfather. She no longer associates her grandfather's name with love but with fear, sadness and anger.

In addition, because the perpetrator is named after her late grandfather and is her cousin, it has caused a lot of conflict within her family. She has to cope with victim blaming and being isolated by some family members because she took the brave step to report the incident. She now no longer lives with family members and resides at a hostel."

7. The above statements aptly explain the ordeal most of the victims raped by a relative would have to go through, after being raped. In this case, the evidence revealed that both the parents of the victim had left her when she was a toddler and she was raised by grandparents. Therefore, the situation of the victim in this case is worse. She came to live in your house about one month before the incident. Her decision to complain against you had now led her to live in a hostel.
8. In my view, punishment and deterrence should be the main purposes of sentencing you. It should be made clear to you and other persons with similar impulses that this court and the society denounces your conduct.
9. I would select 07 years imprisonment as the starting point of your sentence.
10. I consider the following as aggravating factors;
- a) The victim is a cousin sister who is elder to you. She was living in your house under the care of your father. The victim said more than once in her

evidence that she was shocked and she never imagined you to do what you did to her. There is a serious breach of trust;

- b) You have used force on the victim to overpower her by pushing her; and
- c) Even though the victim was an adult, she was a person who grew up without her parents love and care and at the time of offence she was not under the care and protection of a guardian and did not have a proper place of residence. You exploited her vulnerability.

11. In deciding the term to add to your sentence in view of the above aggravating factors, I would consider it appropriate to take into account the fact as it transpired in the evidence that your intention was to have sexual intercourse with the victim, but you did not go that far. Therefore the evidence suggests that you have exercised self-restraint to a certain extent. In the circumstances, considering your overall conduct, I would add 03 years to your sentence in view of the above aggravating factors. Now your sentence is an imprisonment term of 10 years.
12. The only mitigating factor as far as sentencing is concerned is the fact that you are a young first offender. Your personal circumstances cannot be taken into account to reduce your sentence. In view of the fact that you are a young first offender, I would deduct 02 years of your sentence.
13. I hereby sentence you to an imprisonment term of 08 years. I order that you are not eligible to be released on parole until you serve 04 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act. In deciding the non-parole term, I have again considered the fact that you are a young first offender.
14. It was submitted that you were arrested for this matter on 22nd February 2018 and that you were granted bail on 20th March 2018. You were again remanded on 03rd June 2018. Accordingly, you have spent 01 month in custody. The period

you were in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and the Penalties Act.


15. In the result, you are sentenced to 08 years imprisonment with a non-parole period of 04 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 07 years and 11 months

Non-parole period - 03 years and 11 months

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




Vincent S. Perera
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Shekinah Law, Suva for the Accused