

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

CRIMINAL CASE NO. HAC 37 OF 2019

BETWEEN : **STATE**

AND : **SAIMONI PITA KORO**

Counsel : Mr. T. Tuenuku for the State
: Ms. S. Ali for the Accused

Hearing on : 03rd of August 2020
Summing up on : 04th of August 2020
Judgment on : 12th of August 2020
Sentence on : 17th of September 2020

SENTENCE

(The name of the complainant will be suppressed and will be referred to as S.M)

1. The accused, Mr. Saimoni Pita Koro was charged with 8 counts, initially. He pleaded not guilty to all the counts and the matter was taken up for trial and at the conclusion of the prosecution case the court has acquitted him of the 2nd, 3rd, 4th and the 5th counts as the prosecution has failed to adduce sufficient evidence. The defence was called only in regards to the counts 1, 6, 7 & 8.
2. At the conclusion of the trial and the summing up, the assessors unanimously found him guilty of the said counts 1, 6, 7 and 8 counts. This court having reviewed the evidence, conquered with the opinion of the Assessors, found you guilty and convicted you of the said four counts.
3. It was proved during the trial that, being the father of the S.M. how you abused, sexually assaulted and raped her over a period of time.

4. You were the biological father of the complainant and your wife who was the mother of S.M. has died by the time of the alleged incidents. The complainant was looking at you as the sole protector for her protection and security. Instead of protecting her, you preyed upon her.
5. The four offences you have committed form a series of offences of a similar character. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the four (4) offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

6. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the aggregate sentence to be imposed on you.
7. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life.
8. The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

"....It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage."

9. In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

10. In the **State v Lasaro Turagabeci and Others** [1996] FJHC 173; HAC0008.1996S (27 November 1996) Pain J had said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

11. It is safely assumed that the tariff set for rape of a child is 11 to 20 years of imprisonment. [**Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018)]. The facts of the Aitcheson’s case are not much different to the present case other than on a few points. In that the starting point was 14 years. Yet in that there were two victims and both were accused’s biological daughters, but their mother was there. In this case, the sole victim was this motherless biological daughter. It is arguable which is more serious as the child in this case has been extra vulnerable. In consideration of the objective seriousness and the fact that this is an aggregate sentence, I commence the sentence at 12 years of imprisonment.

12. The aggravating factors are as follows:

- (i) This was a serious and abhorrent series of crime.
- (ii) There was gross abuse and breach of trust.
- (iii) The victim was accused’s daughter and she was extremely vulnerable due to her age and other circumstances.
- (iv) The impact of the crime on the victim was traumatic.
- (v) These crimes took place at the family’s own house.

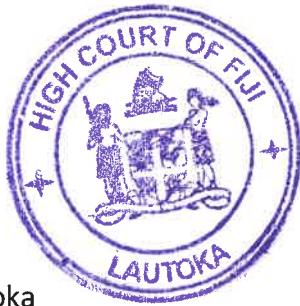
13. Considering the aforementioned aggravating factors, I enhance your aggregate sentence by further 3 years. Now your aggregate sentence is 15 years of imprisonment.
14. Your counsel has indicated that you have no previous convictions or any pending cases. Therefore, I will consider you as a first time offender. Further it is submitted that you have cooperated with the police. It is apparent that you provided food and shelter for the victim and her siblings.
15. In considering that you are a first time offender and the rest of the mitigating factors submitted on your behalf I deduct three years from the above.
16. Accordingly, I sentence you to a term of imprisonment of 12 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 9 years of that sentence.
17. Section 24 of the Sentencing and Penalties Act reads thus:

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

18. You have been in remand custody for this case since your arrest on 20.02.2019. That would be about 1 year and 7 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 19 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.
19. In the result, you are sentenced to a term of imprisonment of 12 years with a non-parole period of 09 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence	-	10 years and 05 months.
Non-parole period	-	07 years and 05 months.

20. You have 30 days to appeal to the Court of Appeal if you desire so.



Chamath S. Morais
JUDGE

At Lautoka
17th September, 2020

Solicitors for the State : ***Office of the Director of Public Prosecutions, Lautoka.***
Solicitors for the Accused : ***Office of the Legal Aid Commission***