

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 121 OF 2020

THE STATE

v

ILAISA TORA

Counsel: Mr U. Lal for State
Ms K. Vulimainadave for Defence

Date of Sentencing Submissions: 26 February 2024
Date of Sentence: 04 March 2024

(Name of the Complainant is suppressed. She is referred to as LN)

SENTENCE

1. Mr Ilaisa Tora, you stand convicted of three counts of Rape (digital). The amended information filed by the Director of Public Prosecution was as follows:

COUNT ONE

Statement of Offence (a)

RAPE: Contrary to section 207(1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence (b)

ILAISA TORA, between the 1st day of January 2019 and the 31st day of December 2019, at Abaca village, Lautoka in the Western Division, inserted one of his fingers into the vulva and/or vagina of LN, a child under the age of 13 years.

COUNT TWO

Statement of Offence (a)

RAPE: Contrary to section 207 (1) and 2 (b) and (3) of the Crimes Act 2009.

Particulars of Offence (b)

ILAISA TORA, between the 1st day of January 2019 and the 31st day of December 2019, at Abaca village, Lautoka in the Western Division, on an occasion different from count one, inserted one of his fingers into the vulva and/or vagina of LN, a child under the age of 13 years.

COUNT THREE

Statement of Offence (a)

RAPE: Contrary to section 207(1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence (b)

ILAISA TORA, on the 6th of March 2020, at Vuda District School, Lautoka in the Western Division, inserted one of his fingers into the vulva and/or vagina of LN, a child under the age of 13 years.

2. You pleaded guilty to the above counts on your own free will. You understood the charges and the consequence of the guilty pleas. I am satisfied that the guilty pleas are informed, unequivocal and entered freely and voluntarily.
3. You agree with the following summary of facts which was read over to you in Court. The facts agreed satisfy all the elements of Rape as charged. You are found guilty and convicted on each count as charged.
4. The facts you agreed are that:
 - (i). Sometime in the year 2019 during the third term school break, the complainant with her cousin went swimming in the river. After bathing, the complainant was

approached by the accused who pulled her towel, covered her mouth with one hand and inserted one of his fingers into the complainant's vagina. During the incident, the complainant's cousin, MT was present.

- (ii). On the second occasion in the year 2019 during the third term school break, different from the first occasion, the complainant went to the accused's house to see the accused person. The accused made her lie down on the mattress and inserted the complainant's vagina with one of his fingers.
 - (iii). On the 6th of March 2020 the complainant was schooling at Vuda District School. On the night of 6th March 2020, whilst the complainant was asleep, the accused came to the complainant, pulled her blanket, removed her clothes and started rubbing her vagina with his fingers. The complainant stated that it was painful.
 - (iv). The matter was reported to the complainant's teacher and thereafter, to the police. The accused was arrested, caution interviewed and charged.
 - (v). At the time of the incident, the complainant was under 13 years of age.
5. The maximum punishment for Rape is life imprisonment. The sentencing tariff for child rape ranges from 11 years to 20 years' imprisonment. [Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)].
6. In selecting your sentence that is best suited to you, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I shall have regard to Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having considered the seriousness of the offence and the harm caused to the victim, I would select the appropriate starting point. The final sentence will be determined after adjusting for the aggravating and the mitigating factors.

7. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on Rights of the Child to which Fiji is a party and our own Constitution require the courts to protect the children who are vulnerable members of our society. Our society and the children, expect elders to care and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.
8. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark the society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and to others with similar impulses that if anyone yield to this crime will meet with severe punishments.
9. Section 17 of the Sentencing and Penalties Act allows the Court to impose an aggregate sentence 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. Accordingly, you will be imposed an aggregate sentence for convictions on all three counts.
10. You have repeatedly sexually abused a child over a period of time. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 12 years from the lower range of the tariff as the first step in the sentencing process.
11. I identify the following aggravating and mitigation factors with the help of the submissions filed by the Counsel:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. You were 43 years old at the time of the offence when your victim was just 11 years old.
- (b). You took the opportunity and exploited the vulnerability of a child.

Mitigating Factors:

- (a). In mitigation, your Counsel informed that you are a single parent of a daughter schooling at Year 6. You are a subsistent farmer.
- (b). You cooperated with the police during the investigation.
- (c). You pleaded guilty to the charges, albeit not at the first available opportunity. You saved the court's time, but your guilty pleas do not indicate that you are remorseful. However, they saved the victim from giving evidence and reliving her ordeal in Court.
- (d). You have no previous convictions. You have maintained a clear record over the past 43 years of your life.

- 12. According to the State, you had been in remand roughly for 15 months. The remand period is deducted from your sentence to arrive at a final sentence.
- 13. I add 3 years to the starting point of 12 years for above mentioned list of aggravating factors to arrive at an interim sentence of 15 years. I deduct 3 years for mitigating factors and the remand period to arrive at an aggregate sentence of 12 years' imprisonment.


14. Taking into consideration your potential for rehabilitation and the gravity and the impact of your offence on the society, I impose a non- parole period of 11 years.

15. Summary

Mr Ilaisa Tora, you are sentenced to an aggregate imprisonment term of 12 years for all three convictions with a non-parole period of 11 years.

16. You have 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

04 March 2024

At Lautoka

Solicitors:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence