

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 129 OF 2013

STATE

-v-

SEREMAIA DELA

Counsels : Mr. A. Singh for the State
Mr. R. Kumar for the accused

Date of Sentence : 6 December 2013

(Name of the victim is suppressed she is referred to as NN)

SENTENCE

1. You are charged as follows:

First Count
Statement of Offence

Rape: Contrary to Sections 149 and 150 of the Penal Code, Cap 17.

Particulars of Offence

Seremaia Dela between the 1st January, 2007 to 31st day of December, 2007, at Nadelei Village, Vatukoula, Tavua in the Western Division, had unlawful carnal knowledge of NN, without her consent.

Second Count
Statement of Offence

Rape: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree 44 of 2009.

Particulars of Offence

Seremaia Dela between the 1st July 2012 to the 31st July 2012, at Nadelei Village, Vatukoula, Tavua in the Western Division penetrated the vagina of NN, with his penis, without her consent.

2. On 28th November 2013 you pleaded guilty to both charges against you and admitted the Summary of Facts on 4th December 2013.
3. The Summary of Facts submitted by the State Counsel states as follows:

The accused, Seremaia Dela is 38 years of Nadelei Village, Vatukoula, Tavua. The complainant in this case is one NN, 10 years of the same village.

The complainant was 10 years old, schooling in Nadelei Catholic School when the first incident took place. She could recall that in the year 2007 during the second term school and in particular on the day she did not go to school the complainant was told by her mother to go and have her bath in the river next to the village. She left her home alone to have her bath and on the way back she met the accused sitting next to the river bank. The accused approached the complainant and asked her to accompany her to the guava patch to collect guavas. The complainant trusted the accused and followed him, suddenly the accused told her to stop and lie down on the ground. He then approached her to remove her clothes and warned her if she doesn't then he will beat her with a guava stick. The complainant was scared when she heard this and followed the accused's instructions. When the complainant got undressed he saw the accused kneeling down and using his tongue to lick her vagina. The accused then unzipped his ¾ pants and then inserted his erected penis into the complainant's vagina. She was in great pain and started crying. She was helpless as the accused on top of her. She could feel that her vagina was wet. When the accused realized that the complainant was crying, he informed her to get up, get dressed and not to inform anyone about this incident. When the complainant was walking to the river she could feel drops of blood coming out of her vagina. She then had her bath and went home without informing anyone as she was scared of the accused as he might do something to her.

The second incident happened sometimes in July 2012 when the complainant's father was cutting cane at Koro No.2. The complainant's family were residing at an Indian man's house in Koro No.2. During their stay in July 2012, one afternoon after returning from school the complainant was informed by her neighbours that her mother and father were both in the farm. She entered the house where the family was staying, to her astonishment she saw the accused lying on the floor. She questioned her as to what he is doing here and the accused informed her that he is just visiting. The complainant was moving in the room to find her clothes when she was told by the accused to sit on

the bed. She tried to see if anyone was coming. She saw her brother at a distant but still far from her room. The accused then undressed the complainant and himself and inserted his erected penis into the complainant's vagina. He had forceful sexual intercourse with her for two minutes as he saw the complainant's brother approaching the room. He then told the complainant to dress up and then left the room after warning the complainant.

The accused was arrested, interviewed under caution to which he admitted the offence.

4. After carefully considering the Plea of you to be unequivocal, this Court found you guilty for two counts of Rape and accordingly you are convicted for two counts of Rape under Section 149 and 150 of the Penal Code, Cap17.
5. Accused **Seremaia Dela** you stand convicted for two counts of Rape.
6. The tariff for rape is well settled since the Judgment of His Lordship Mr. A.H.C.T. Gates in **State v Marawa**. [2004] FJHC 338; HAC 0016T.2003S (23 April 2004). The starting point of a rape of an adult is 7 years. The tariff is 7 years to 15 years.
7. In **Mohamed Kasim v The State** (unreported) Fiji Court of Appeal Cr. Case No. 14 of 1993; 27 May 1994, The Court of Appeal observed:

"We consider that at any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. 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. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point."

8. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 15 years.
9. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 His Lordship Mr. Paul Madigan held that:

"Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's

children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”

In this case 42 year step father was sentenced for 13 years with non parole period of 10 years for digital rape of 14 year old step daughter.

10. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 His Lordship Mr. Priynatha Nawana held that:

“The accused’s engagement in his unilateral sexual activity with a little girl who was insensitive to such activity is most abhorrent. This kind of immoral act on a little girl of MB’s standing is bound to yield adverse results and psychological trauma, the effect of which is indeed difficult to foresee and asses even by psychologists and sociologists. The depravity of the accused in committing the offence should be denounced to save little children for their own future; and, the men of the accused’s caliber should not be allowed to deny the children of their legitimate place in the community. In passing down the sentence in case of this nature, deterrence is therefore, of paramount importance.”

11. Considering the above, I commence your sentence at 13 years imprisonment for each charge of Rape.

12. Aggravating factors;

- (a) The victim was of a younger and tender age,
- (b) Victim was subjected to more than one sexual act,
- (c) You had made the victim sexually active at a young age,
- (d) You had traumatized the life of the victim.

Considering all, I increase your sentence by 3 years, now the sentence is 16 years imprisonment.

13. Mitigating circumstances:

- (a) You are first offender at the age of 38 years until you were convicted and sentenced by this Court on 29.11.2013.

Considering all, I reduce 1 year from your sentence now your sentence is 15 years imprisonment.

14. For the guilty plea, I deduct 3 years and now your sentence is 12 years.

15. You were in remand from 12.6.2013 for a period of 5 months. That period was deducted in the sentence of HAC 125/2013.

16. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 11 years as non parole period.

17. Your sentences are as follows:

- (i) 1st count of Rape - 12 years
- (ii) 2nd count of Rape - 12 years

18. The Fiji Court of Appeal in **Vukitoga v State** [2013] FJCA 19; AAU 0049.2008 (13 March 2013) cited with approval the following citation of D.A. Thomas, Principles of Sentencing (2nd edition, 1979) p. 56-57 which was cited in High Court of Australia judgment **Mill v The Queen** [1988] HCA 70:

“The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is ‘just and appropriate’. The principle has been stated many times in various forms: ‘when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong’; “when... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behavior and ask itself what is the appropriate sentence for all the offences.”

19. Considering the totality principle, I order the sentences of both charges to run concurrently.

20. Further you are already serving a sentence of 11 years 7 months given to you on 29.11.2013. You have pleaded guilty to all the charges in five separate similar cases. If separate sentences are given for each of these cases it will have a crushing effect on you. The State had conceded this position. Thus, I order this sentence to run concurrently with the sentences you are already serving.

21. There was report from psychiatrist Victor Herald Wasson that you are fit to plea. The doctor was called to give evidence. According to him you had schizophrenia. Now you are treated and fit to plea. Further such treatment could be continued while you are in remand. Once you are served the term, a community treatment order could be issued if needed.

Summary

22. You are sentenced to 12 years imprisonment. You will not be eligible for parole until you complete serving 11 years of imprisonment. This sentence to run concurrently with other sentences already ordered.

23. Prison authorities are directed to continue with the treatment of you acting under Section 86 (1) & (2) of the Mental Health Decree, 2010.

24. 30 days to appeal to Court of Appeal.

Sudharshana De Silva

JUDGE

AT LAUTOKA

On 06th December 2013

Solicitors for the State:

Solicitors for the Accused:

Office of the Director of Public Prosecution

Office of the Legal Aid Commission