

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 039/ 2012

BETWEEN : **STATE**

AND : **TALAIASI MUALUVU**

COUNSEL : **Mr. S. Vodokisolomone and Ms. P. Low for the State**
Ms. M. Lemaki for the accused

Date of Hearing : **15th April, 2014.**

Date of Sentence : **17th April, 2014.**

[Name of the victim is suppressed. She will be referred to as N.D.]

SENTENCE

01. The Director of Public Prosecution had preferred the following charge against the accused above named.

Statement of Offence

RAPE: Contrary to Section 207(1) and (2)(b) and (3) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

TALAIASI MUALUVU on 29th of June, 2012, at Savusavu in the Northern Division, penetrated the vagina of N.D with his finger, the said N.D. being under the age of 13.

02. When the Plea was taken up on the 08th day of August, 2013 the accused had pleaded not guilty to the charge against him. But on 14/04/2014, when the trial was about to begin, the accused through his counsel informed that he wish to reconsider his plea. Information was read out and explained the charge in both languages. Accused after understanding the charge pleaded guilty to the charge. Accepting the Plea to be unequivocal this court found him guilty and convicted him under Section 207(1) and (2)(b) and (3) of the Crimes Decree No: 44 of 2009.
03. State Counsel submitted following summary of facts of which the accused admitted.
04. The accused, Talaiasi Mualuvu was 18 years old, unemployed Fijian youth from Korosi Village in Natuvu at the time of the offence. On 29th of June 2012, the victim and her brother namely Yavaki Junior (5 years old) travelled to school together and upon arriving, discovered that there would be no classes that day as their teacher was unwell. They met a fellow classmate named Timoci and all started playing together in the kindergarten block. Whilst they were playing, the accused approached them and told them to leave the place they were playing in. As the 2 boys ran off, he grabbed the victim and carried her into a toilet stall. He then took off her pants and panty and began fondling her vagina, then inserted his finger into her vagina. The victim was crying throughout the whole incident. Her brother, noticing she was not with them, went to look for her and heard her crying from toilet stall. He peeped through the door and saw the accused inside the stall with the victim and victim's pant was down. He

then told the victim to open the door, and the victim was also shouting at her brother to open the door and take her away. When the accused eventually released the victim and her brother went straight home and reported the incident to their mother, Takapi Lutumailagi. She then informed her husband, who reported the matter to the police. The accused was arrested and caution interviewed about the incident. He admitted during his caution interview that he had taken the victim to the toilet stall, taken off her panty and inserted his finger in her vagina three times and that the victim was crying when he penetrated her vagina with his finger. He also made a statement admitting to the offence when initially charged by the police. He was produced in court and stands charged with rape contrary to section 207(1) and (2) (b) and (3) of the Crimes Decree No: 44 of 2009.

Tariffs for Rape

05. In the case of **Chand v State** [2007] AAU005. 2006S (25 June 2007), the court referred to the case of **Mohammed Kasim v The State** Appeal 14 of 1993 where the same court observed:

"We consider that any rape case without aggravating or mitigating feature the starting point for sentencing an adult should be a term of imprisonment of 7 years. It must be recognized by the courts that the crime of rape has become altogether too frequent and the sentences imposed by the courts for that crime must more nearly reflect an understandable public outrage"

06. In **Sireli v State** [2008] FJCA 86; AAU0098 of 2008S (25 November 2008). The court also referred to the case of **State v Lasaro Turagabeci & others** HAC 0008 of 1996, the court observed:

"The courts have made it clear that rapist 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 of 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 sentence”.

07. In **State v AV** [2009] FJHC24: JAC 192.2008(2 February 2009) the court stated:-

“Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assault on children. Children are our future. The courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences.

...

The tariff for rape of a child is between 10-14 years imprisonment. (**Mutch v State, Cr. App. AAU0060/99, Mani v State, Cr. App. No.HAA0053/02L, State v Saitava, Cr. Case No: HAC10/07, State v Marawa, Cr. Case No: 016/03, Drotini v State, Cr. App. AAU001/05 and State v Tony, Cr. App. No. HAA003/(08)**)”

08. The accused is 20 years of age. He is unemployed and lives at Korosi, Cakaudrove, with his parents and other siblings. He has class 08 level education. When arrested he co-operated with the police and made confession in his Record of Interview. He was in remand custody for well over 10 months. He pleaded guilty before commencement of the trial.
09. According to medical report of the victim had no visible injuries noted by the doctor. The victim was examined after 6 days of the alleged incident.
10. I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially sections 4(1), 4 (2) and 15(3), to determine an appropriate sentence.

11. Now I consider the aggravating factors:

1. The victim was 03 years old at the time of the incident.
2. The act of the accused made the victim insecure.
3. The accused had caused adverse psychological trauma the effect of which is difficult to foresee and asses even by psychologist or sociologist.
4. The accused has instilled a sense of fear into the victim which may affect her whole life.

12. Now I consider the mitigating circumstances:

- (a) The accused pleaded guilty before the commencement of the trial.
- (b) By pleading guilty he has saved the victim from having to re-live her ordeal all over again whilst giving evidence.
- (c) Accused was 18 years and 09 months old at the time of committing the offence.
- (d) He co-operated with the Police and made confession in his record of Caution Interview Statement.
- (e) He is unemployed and lives with his parents and his siblings.
- (f) He is remorseful.
- (g) He was in remand for more than 10 months.
- (h) Accused has no previous conviction.

13. Considering all aggravated and mitigating circumstances I take 10 years imprisonment as the starting point. I add two years for aggravating factors to reach the period of imprisonment at 12 years. I deduct 03 years for the mitigating factors.

14. In summary you are sentenced to 09 years imprisonment.

15. The accused was born on 23/09/1993. He was 18 years and 09 months old at the time of offending. He committed the offence just entering his adulthood. He has spent over 10 months in remand for this case.
16. Considering all and acting in terms of section 18(1) of the Sentencing and Penalties Decree, I impose 05 years as non-parole period.
17. 30 days to Appeal.



P. Kumararatnam
JUDGE



At Labasa
16/04/ 2014