

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 03/2014

BETWEEN : STATE

AND : S.V (The Juvenile)

COUNSELS : Ms. P. Low for the State
Ms. M. Lemaki for the Accused

Date of Hearing : 19/05/2014

Date of Sentencing : 23/05/2014

SENTENCE

[Names of the accused and the victim are suppressed. The accused will be referred to as S.V. and victim will be referred to as R.T.]

[01] The Director of Public Prosecution had preferred the following charge against the Juvenile above mentioned.

FIRST COUNT

Statement of Offence

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

Particulars of Offence

S.V. with four others on the 17th day of August, 2012 at
Bua College, Bua in the Northern Division, penetrated the
vagina of R.T with his penis without R.T's consent.

- [02] When the plea was taken on 02/05/2014 the Juvenile pleaded guilty to the charge. Accepting the Plea to be unequivocal this court found him guilty to the charge and convicted him under Section 207(1) and (2) and (a) of Crimes Decree No: 44 of 2009.
- [03] State Counsel submitted the following summary of facts of which the Juvenile admitted.
- [04] On 17th August 2012 (Friday) at about 3pm whilst in school, victim went to the school farm with one of the juvenile's co-offender. On this same day and time the juvenile offender was relaxing in one of the empty classrooms when he was called by another of his co-offender if he wishes to have sexual intercourse. Juvenile offender responded that he wishes to have sexual intercourse in which his other co-offender led him and another co-offender to school farm. At the school farm, the juvenile offender saw the victim lying on the ground. He inserted his penis into the victim's vagina and victim said nothing to him nor did he say anything to the victim. Victim then later wore her clothes and relayed the story of what happened to her at the school farm to one Olivia a student and went home. Victim did not tell anyone else what happened to her on that day at the school farm as she was scared. Victim

stated that she did not like what was done to her by the juvenile and others as she was not consenting to the act.

- [05] The matter was reported later by the school to the police, the juvenile offender was interviewed under caution on 11/10/2012 at the Nabouwalu Police Station in which he admitted having inserted his penis into the vagina of the victim without anything said to him by the victim and vice versa.
- [06] The juvenile offender was formally charged on 12/10/2012 at Nabouwalu Police Station in which he gave no statement to the police.
- [07] The victim was medically examined at Nabouwalu Hospital on 10/10/2012 and a medical report was obtained on her behalf which stated no other finding apart from perforated hymen.
- [08] The juvenile offender is a first offender and has no previous convictions as per confirmation from the Criminal Record Office.
- [09] The accused is the first offender. He was 16 years old a juvenile at the time of committing the offence.
- [10] As per Section 207(1) (2) and (a) of the Crimes Decree No: 44 of 2009, the maximum sentence for an offence of Rape is to imprisonment for life.
- [11] Section 30 of the Juvenile Act prescribes a maximum sentence of 2 years. As per Section 20 Juvenile Act the words "Conviction" and "Sentence" shall not be used in relation to Juveniles.

Tariffs for Rape

- [12] 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. The sentences imposed by the courts for that crime must reflect an understandable public outrage"

- [13] In the case of **State v AT** [2011] FJHC360 : HAC 035. 2011S (14th June 2011) Hon. Justice Temo remarked that;

"In my view, order has to be established in the Juvenile world. Young persons who are approaching adulthood (i.e. 18 years old) should not be allowed to exploit the venerable in the Juvenile world. In this case, a 17 years 10 months and 03 days old juvenile takes the advantage of a 04 years old juvenile. In my view it is the duty of the court to step in and protect the most venerable in the Juvenile world.

This is especially so, when those who are approaching adulthood (i.e. 18 years old) take advantage of the young, by raping them. To commit rape against the young, in my view, is the characteristic of a "depraved character" and a custodial sentence within the ambit of the Juvenile Act is called for. The length of the sentence will depend on the mitigating and aggravating factors".

- [14] Now the Juvenile is 17 years old and he is studying.
- [15] In **O'Keefe v State** [2007] FJHC: 34 the Fiji Court of Appeal held that the following principle of sentencing:

"When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person"

- [16] 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), (2) and 15 (3) of the Act.

[17] Now I consider the aggravating factors:

1. That the offence was committed on a Juvenile. The victim was 16 years old at the time of the incident.
2. The offence was committed by a juvenile.
3. The victim is a fellow student of the school.
4. That the accused took advantage of the trust that the victim placed on him as a fellow student.
5. The victim was emotionally and psychologically traumatized as a result of the offence.

[18] Now I consider the mitigating circumstances:

1. The Juvenile is remorseful.
2. He saved the court time by pleading guilty to the charge.
3. Prevented the complainant from having to relive her ordeal encountered.
4. He is continuing his education.
5. He is the first offender and fully co-operated with police.
6. He regrets what he has done and assures the court he will not re-offend.
7. He is the eldest in his family. His parents divorced early in the year 2013.
8. He regrets what he has done to the victim. He promises that he would not re-offend again.

[19] At present the Juvenile is 17 years. He has already approaching his adulthood. The profound duty of the court is to ensure safety and protection of Juveniles in the community. Hence this court is duty bound to pass an appropriate sentence in order to protect Juveniles.

[20] Considering all aggravating and mitigating circumstances I take 12 months imprisonment as the starting point. I add 04 months for aggravating factors to reach the period of imprisonment at 16 months. I deduct 04 months for the mitigating factors.

[21] Now the sentence of the Juvenile is 12 months imprisonment.

- [22] Considering personal background and other circumstances of this case I suspend the 12 months imprisonment of the Juvenile for a period of 05 years. Suspended sentence is explained to the Juvenile.
- [23] Probation officer is requested to arrange proper counseling programs for the Juvenile until he completes his education. Breach of any conditions lay down by the probation officer to be reported to this Court for an appropriate order.
- [24] 30 days to appeal.



P Kumararatnam
JUDGE



At Labasa
23/05/2014