

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO.: HAA 010 OF 2014

BETWEEN : KEMUELI MUSUVANUA
APPELLANT

AND : THE STATE
RESPONDENT

COUNSEL : Appellant in person
Ms. P. Low for Respondent

Date of Hearing : 25/06/2014
Date of Judgment : 27/06/2014

JUDGMENT


01. Kemueli Musuvanua (hereinafter "the appellant") was charged for 08 counts of Defilement of a Young Person between 13 and 16 years contrary to section 215 of the Crimes Decree. The Charges were filed at the Labasa Magistrates' Court on 10/09/2013.
02. The victim is the sister-in-law of the Appellant as he married to the elder sister of the victim.

03. On 25/02/2014, the charges in respect of Criminal Case No: 457/2013 was read out to the Appellant. He pleaded guilty to the charges and admitted the summary of facts. The Appellant was represented by the Legal Aid Commission Counsel.
04. On 27/02/2014, he was sentenced to a prison term of 24 months imprisonment, concurrently for counts 1-7 imprisonment and 12 months consecutive imprisonment for the count 08. Totally he was sentence to 3 years imprisonment. Non parole period was not set in this case.
05. The Appellant filed his appeal grounds against the sentence on time. The ground of appeal against the sentence is that;
 - (i) The sentencing Magistrate had erroneously applied the totality principle in my case when she ordered a consecutive sentence on count 08 when in fact section 22 of the Sentencing and Penalties Decree states otherwise.
06. Section 22 of Sentencing and Penalties Decree states as follows:

“22 (1) Subject to sub section (2), every term of imprisonment imposed on a person by a court must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentence of imprisonment.

 - (2) Sub section (1) does not apply to a term of imprisonment imposed-
 - (a) In default of payment of a fine or sum of money;
 - (b) On a prisoner in respect of a prison office or as a result of an escape from custody;
 - (c) On a habitual offender under Part III;
 - (d) On any person for an offence committed while released on parole;
or
 - (e) On any person for an offence committed while released on bail in relation to another offence.

07. The State submits that the offence with which the Appellant has been convicted with on all 08 counts has a statutory penalty of 10 years imprisonment. The tariff for all 08 counts is one that ranges from a suspended sentence to 4 years imprisonment as highlighted by the Learned Magistrate in her sentence per case of **Domoni v State** (2009) FJHC 142:HAA089/2008. The State also relies on **Etonia Rokowaqa v State** HAA 37 of 2004 in which Goundar J stated *“Suspended sentence is reserved for virtuous friendships offending while higher side of the tariff is for offenders who are older and in position of trust with the victim”*.
08. The Appellant submits that the Learned Magistrate had erred when she has not said why she has made the sentence on count 08 consecutive when section 22 of the Sentencing and Penalties Decree stipulates that sentence are to be served concurrently unless the specific condition in section 22(2) apply.
09. The Learned Magistrate in her sentence very clearly stated why she has imposed a consecutive sentence in her sentencing. In this case the Appellant was in a position of trust and he took advantage of the willingness of the victim who is his younger sister-in-law and had sexual intercourse with her.
10. The Appellant is 33 years of age, married with three children, is separated from his wife as a result of the incidents in this case.
11. Considering the appeal ground of the Appellant it has no merits. I agree with Learned Magistrate’s sentence passed in this case.
12. The Appeal against the sentence is dismissed.
13. Appellant has 30 days to appeal.


P Kumararatnam

JUDGE



At Labasa
27/06/2014