

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 195 OF 2013

STATE

-v-

ADITYA DEEDAR SAMI

Counsels : Mr. Josaia B. Niudamu for the State

The accused in person

Date of Sentence : 30 June 2014

(Names of the victims are suppressed they are referred to as NH and PN)

SENTENCE

1. You are charged as follows:

Count 1

Statement of Offence

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

Particulars of Offence

ADITYA DEEDAR SAMI on the 13th day of October 2013 at Nadi in the Western Division, penetrated the anus of NH, aged 9 years with his penis.

Count 2
Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (b) (i) and (2) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ADITYA DEEDAR SAMI on the 13th day of October 2013 at Nadi in the Western Division, procured **NH** to commit an act of gross indecency by sucking the penis of **PETAIA NAVURA**.

2. When plea was taken in this matter on 14.2.2014 you pleaded Not Guilty for both charges. You were represented by Legal Aid at that time. On 25.5.2014 you wrote to this Court that you want to withdraw the counsel and change the plea. Your applications were allowed on 29.5.2014. On the same day you pleaded Guilty for both charges in the information. Summary of facts were served to you on 2.6.2014. You admitted the summary of facts on 10.6.2014.
3. The Summary of Facts submitted by the State Counsel states as follows:

The complainant is one NH, 9 years and a class 4 student of Lautoka Muslim School. At the time of the offence, the complainant was residing with his grandmother at Koromakawa settlement, Vunayasi in Nadi.

On Sunday, 13th October 2013 at about 3pm, the accused, Aditya Deedar Sami (also known as "Roy"), 22 years of Koromakawa settlement in Nadi, invited the complainant and two other children (PW 2 and PW 3) to his place at Koromakawa settlement for lunch. Once they finished with their lunch, PW 2 and PW 3 went outside to wash their dishes.

The accused then called the complainant to his bedroom. The accused was lying on the bed and he was watching pornographic movie in his mobile phone. The accused then showed the pornographic movie to the complainant. While they were watching the pornographic movie, the accused was touching his penis then after a while he removed the complainant shirt, ¾ shorts and underwear. The accused took the complainants clothes and hidden it. The complainant was ashamed of coming out of the bedroom so he covered himself with the blanket whilst the accused went to have his shower.

The accused, after shower, went to his bedroom and was only wearing his underwear. The accused then again lay in bed and then covered himself with the same blanket which the complainant was using. The accused then again showed pornographic movie to the complainant. The accused then got up and removed his underwear. The complainant saw the accused penis and he started crying. The accused then pulled the complainant hand and grabbed his mouth. The complainant managed to hit the accused with his elbow and the accused got angry and slap the complainants head and buttocks.

The accused then made the complainant to bend down on the bed and then the accused penetrate the complainant's anus with his penis. The complainant was in pain and he started to scream. However, the accused blocked his mouth and informed him not to cry or he will hit the complainant.

PW 2 and PW 3 heard that the complainant was shouting and PW 2 went inside the room to see them. When PW2 entered the room, the accused pulled PW 2 and told him to remove his sulu and underpants and the accused forced the complainant to suck PW 2's penis.

The accused wore his clothes after having unlawful sexual intercourse with the complainant and informed the complainant that his clothes is underneath the sofa. The complainant then wore his clothes and he was threatened by the accused not to tell anyone.

The matter was later reported to the Police and the accused was interviewed under caution and he admitted that he had raped the complainant and also forced the complainant to suck PW 2's penis.

The accused is a first offender.

4. After carefully considering the Plea of you to be unequivocal, this Court found you guilty for one count of Rape and one count of Sexual Assault and accordingly you are convicted for one count under Section 207 (1) and (2) (a) of the Crimes Decree and one count under Section 210 (1) (b) (i) and (2) of the Crimes Decree.
5. Accused **Aditya Deedar Sami** you stand convicted for one count of Rape and one count of Sexual Assault.

6. According to the Crimes Decree the maximum punishment for rape is Imprisonment for life. It is a serious offence.
7. The tariff for rape is well settled since the Judgment of then Hon. Mr. Justice 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.
8. 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.”

9. The tariff for the rape of children differs from that of adults and takes the tariff of 10 to 16 years.
10. In **State v Mario Tauvoli** [2011] FJHC 216, HAC 027.2011 Hon. Mr. Justice 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.

11. In **State v Anthony** [2012] FJHC 1013; HAC 151.2010 Hon. Mr. Justice Priyantha 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."

12. The aggravating factors are:

- (i) Breach of trust- the complainants treated you as an elder brother as you are from the same neighborhood,
- (ii) The age gap is 12 years between you and the victim,
- (iii) The emotional effect on the complainant.

13. The mitigating factors are:

- (i) You are a first offender at the age of 22 years,
- (ii) You are sole bread winner for sickly sister and elderly mother,
- (iii) You are remorseful.

14. Considering the above, I commence your sentence at 12 years imprisonment for the charge of Rape. I add 4 years for the aggravating factors mentioned above and deduct two years for the mitigation. Now the sentence is 14 years for the charge of Rape.

15. I deduct 4 years for your Guilty plea. Now your sentence is 10 years.

16. You were in remand from 16.10.2013 for a period of 8 months and 14 days. I deduct that period from above sentence. Now your sentence is 9 years 3 months and 16 days.

17. Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 8 years and 6 months as non-parole period.

18. The maximum penalty for the offence of Sexual Assault is 14 years imprisonment.

19. Hon. Mr. Justice Paul Madigan in *State v Laca* [2012] FJHC 1414; HAC 252.2011 (14 November 2012) followed the United Kingdom's Legal Guidelines for sentencing which divide sexual assault offending into three categories.

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

(a) Contact between the naked genitalia of the offender and another part of the victim's body;

- (b) Contact with the genitalia of the victim by the offender using part of his or her body other than genitalia, or an object;
- (c) Contact between either the clothed genitalia of the offender and naked genitalia of the victim; or the naked genitalia of the offender with the clothed genitalia of the victim.

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than genitalia).

20. The tariff for the offence of Sexual assault is between 2 to 8 years imprisonment as decided in **Abdul Khaiyum** HAC 160/2010 by Hon. Mr. Justice Paul Madigan.

21. Considering all above, I order a sentence of 6 years for the count of sexual assault.

22. Your sentences are as follows:

- (i) 1st count of Rape - 9 years 3 months and 16 days.
- (ii) 2nd count of Sexual assault - 6 years

23. 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.'"

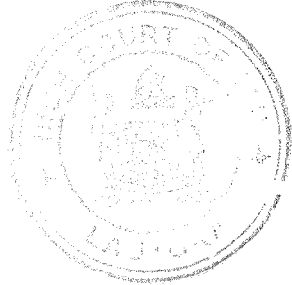
24. Considering the totality principle, I order all the sentences to run concurrently.

25. Having considered the Domestic nature of the relationship you had with the victim, I order a permanent **Domestic Violence Restraining Order (DVRO)** in place, identifying victim NH as the protected person. You are hereby ordered not to have any contact with the victim directly or by any other means, unless otherwise directed by this Court.

Summary

26. You are sentenced to 9 years 3 months and 16 days imprisonment. You will not be eligible for parole until you complete serving 8 years and 6 months of imprisonment.

27. 30 days to appeal to Court of Appeal.




Sudharshana De Silva
JUDGE

At Lautoka
30th June 2014

Solicitors : Office of the Director of Public Prosecution for State
Accused in Person