

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 077/2013

BETWEEN: : THE STATE

AND: : DENNIS MARK HAZELMAN

COUNSEL: : Ms A Vavadakua for the State
Ms K Vulimainadave and P Tawake for the
Accused

Date of Trial : 20-21/10/2014
Date of Summing-Up : 22/10/2014
Date of Judgment : 24/10/2014
Date of Sentence : 28/10/2014

SENTENCE

[Name of the victim is suppressed. She will be referred to as [E.W]

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

First Count

Statement of Offence

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

Particulars of Offence

DENNIS MARK HAZELMAN between the 17th day of August 2012 and the 3rd day of September 2012 at Samabula in the Central Division had carnal knowledge of E.W. without her consent.

Alternative Count

Statement of Offence

DEFILEMENT OF A GIRL BETWEEN 13 AND 16 YEARS OF AGE:
Contrary to Section 215 (1) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

DENNIS MARK HAZELMAN between the 17th day of August 2012 and the 3rd day of September 2012 at Samabula in the Central Division had unlawful carnal knowledge of E.W. being a person above the age of thirteen years but below the age of sixteen years.

02. After trial on the charge, the accused was found guilty of the charge of Rape. Accordingly he was convicted of committing Rape.

03. According to the victim she never consented for sex with the accused. It was Senimili who agreed to have sex with the accused. But the victim was craftily taken to the spot by Senimili. It was the first time the victim met

the accused. She had never met the accused before the incident. The victim was a small girl at the time of the incident. Due to insistence the victim only agreed to kiss the accused. As she was small she always thought that she would be protected by the adults. The partly built house where the alleged incident happened was dark at the time of the offence. Victim could not run from the house as Senimili was blocking the entrance. Further the accused was too heavy for her to resist at that time. Victim could not shout as her mouth was blocked by the accused's chest. As a result of this incident she became pregnant and delivered a baby boy when she was studying in Class 08. She was 13 years and 05 months at the time of the offence.

04. The accused in his evidence admitted meeting the victim and Senimili, taking the victim to a partly constructed house in the night, removing her clothes, requesting for sex and kissing her. He denied having sexual intercourse with the victim.
05. As per Section 207(1) (2) (a) of the Crimes Decree No: 44 of 2009 the maximum sentence for an offence of Rape is imprisonment for life.

Tariffs for Rape

06. 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"

07. 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".

In this case the complainant was a child at the time of the incident. Hence the tariff for the rape of a child is a sentence between 10 to 15 years. See *Mark Mutch v The State* Criminal Appeal No.AAU 0060 of 1999, Fiji Court of Appeal; the actual sentence will depend on the mitigating and aggravating factors.

08. In *State v AV* [2009] FJHC24: HAC 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."

09. In the recent Court of Appeal decision in *Anand Adhay Raj v State* AAU0038 of 2010, the court laid down the following tariff:

"[18] Rapes of juvenile (under the age of 18 years) must attract a sentence of at least 10 years, and the accepted range of sentence is between 10 years and 16 years".

10. The accused was 24 years of age at the time of the offence. He is a student of Fiji National University.

11. 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"

12. I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially those of the Sections set out below in order to determine the appropriate sentence.

13. Section 15(3) of the Sentencing Decree provides that:

"as a general principle of sentencing, a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the objectives of sentencing stated in Section 4, and sentence of imprisonment should be regarded as the sanction of last resort taking into account all matters stated in the General Sentencing Provisions of the decree".

14. The objectives of sentencing, as found in section 4(1) of the Decree, are as follows:

1. To punish offenders to an extent and a manner, which is just in all the circumstances;
 2. To protect the community from offenders;
 3. To deter offenders or other persons from committing offences of the same or similar nature;
 4. To establish conditions so that rehabilitation of offenders may be promoted or facilitated;
 5. To signify that the court and the community denounce the commission of such offences; or
 6. Any combination of these purposes.
15. Section 4(2) of the Decree further provides that in sentencing offenders, a Court must have regarded to:
- (a) The maximum penalty prescribed for the offence;
 - (b) Current sentencing practice and the terms of any applicable and guideline Judgments;
 - (c) The nature and gravity of the particular offence;
 - (d) The defender's culpability and degree of responsibility for the offence;
 - (e) The impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;
 - (f) Whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

16. Now I consider the aggravating factors:

1. The victim was 13 years and 05 months old at the time of the offence.
2. The act done to the victim by the accused person took away the victim's dignity in the society.
3. The accused had led the victim to fall pregnant with his child.
4. The accused had caused adverse psychological trauma the effect of which is difficult to foresee and asses even by psychologist or sociologist.
5. The accused has instilled a sense of fear into the victim which may affect her whole life.
6. The accused made the victim to re-live the horror in the court.
7. No remorse expressed.

17. Now I consider the mitigating circumstances:

1. The Accused is a first offender.
2. Accused is 26 years old and a student at Fiji National University.
3. He is single.
4. He has been in remand for about 01 month.
5. He has his mother and step father to support.

18. Considering all aggravated and mitigating circumstances I take 10 years imprisonment as the starting point. I add 05 years for aggravating factors to reach the period of imprisonment at 15 years. I deduct 04 years for the mitigating factors.

19. Now your sentence is 11 years imprisonment.

20. Your counsel requests the most lenient sentence. You have committed the offence on a girl who was 13 years and 05 months old. You took away her dignity in the society. You put her future in dark. Now you are 26 years old and a student at Fiji National University.
21. Considering all and acting in terms of Section 18(1) of the Sentencing and Penalties Decree, I impose 09 years as non-parole period.
22. 30 days to appeal.



A handwritten signature in blue ink, consisting of a vertical line followed by several loops and a diagonal stroke.

P Kumararatnam
JUDGE

At Suva
28/10/2014