

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 79 of 2013

BETWEEN:

THE STATE

AND:

JOSEFA VEREVOU

Counsel: Mr. F. Lacanaivalu for State
Mr. M. Fesaitu for Accused

Date of Hearing: 23-24 December 2014

Date of Judgment: 30 December 2014

SENTENCE

[1] Josefa Verevou, you appear in Court for sentence for the following offences:

- | | | |
|---------|---|---|
| Count 1 | - | Sexual Assault contrary to section 210 (1) (a) of the Crimes Decree 2009 |
| Count 2 | - | Rape contrary to sections 207 (1) (2) (a) and (3) of the Crimes Decree 2009 |
| Count 3 | - | Rape contrary to sections 207 (1) (2) (a) and (3) of the Crimes Decree |

- [2] Initially, you were charged with 3 counts of rape. Count 1 alleged digital rape by finger. Counts 2 and 3 alleged penile rape. Before the commencement of trial, you pleaded guilty to counts 2 and 3. You offered to plead guilty to a lesser charge of sexual assault on count 1 but that offer was not accepted by the State.
- [3] The trial commenced. You were found not guilty of rape but guilty of sexual assault on count 1. I do not hold against you that you exercised your right to a trial on count 1. The State chose not to accept your guilty plea to a lesser charge. As a result, the victim had to give evidence. After due process you were convicted of an offence you maintained you were guilty of before the trial commenced. The offer of guilty plea to sexual assault on count 1 and your guilty pleas on counts 2 and 3 mitigate your offending.
- [4] In addition, you are a person of previous good character. You are now 63 years old. You committed the offences when you were 62 years old. You are a widower. You have three grown up children. You are illiterate and a farmer by profession.
- [5] The aggravating factors are many. The victim was your niece. She was 12 years old when you sexually assaulted her by touching her genitalia over her underwear in August 2013. The following month (September) you had sexual intercourse with her inside your house. The rape was repeated in that month. Apart from having sexual intercourse with the victim, you licked her breasts and sucked her nipple. The second episode took place in the bushes and when another 12 year- girl from your settlement confronted you after witnessing the incident, you grabbed her and asked her to try what you were doing to the victim. The other girl managed to free herself and escape.
- [6] The sexual abuse started shortly after the victim moved in to live with you and your family. Although you did not use any violence or threat of violence either before, during or after the sexual acts, your status as a senior male member of her family was sufficient to prevent her from resisting or complaining. The sexual intercourse was painful experience for her. She lost her hymen at age 12. She bled from her genitalia and the pain continued for a few days. You took advantage of the victim's vulnerability as a child, and as her guardian you grossly breached her trust. Your punishment must reflect society's abhorrence of this crime that is becoming too prevalent.

- [7] The maximum penalty for sexual assault is 10 years' imprisonment. There is no set tariff for this offence. But touching the genitalia of a child even over her underwear is considered serious assault.
- [8] The maximum penalty for rape is life imprisonment. The courts have a duty to impose condign punishment to reflect the seriousness of this offence. For rape of a child, the accepted range of sentences is between 10 and 16 years' imprisonment (Raj v The State, unreported Appeal No. CAV0003 of 2014; 20 August 2014).
- [9] I use rape as the head offence. I start with 12 years and increase the sentence to 16 years to reflect the aggravating factors and reduce the sentence to 11 ½ years to reflect the mitigating factors. I make a further reduction of 1 ½ years to reflect the remand period.
- [10] For the offence of sexual assault, I sentence you to 4 years' imprisonment.
- [11] For each count of rape, I sentence you to 10 years' imprisonment. All sentences are made concurrent. Your total sentence is 10 years' imprisonment. You must serve a non-parole period of 7 years.



Daniel Goundar

JUDGE



At Labasa

30 December 2014

Solicitors:

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused