

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO: HAC 228 OF 2016

(Magistrates Court Case No. 64 of 2009)

STATE

-v-

TIMOCI VULUMA

Counsel : **Ms. Naibe for State**
Ms. Diroi for Accused

Date of Judgment : **14th August, 2015**

Date of Sentence : **24th November, 2016**

SENTENCE

- [1] Timoci Vuluma, you were found guilty after trial and was convicted by the Magistrates Court at Nadi on one count of Rape contrary to Section 149 and 150 of the Penal Code.
- [2] Having considered an application made by the Prosecution, the matter has been transferred to this Court for sentencing apparently under Section 190 (1) (b) of the Criminal Procedure Decree.
- [3] The victim was 12-year-old Class-five student at the time you committed this offence. She was your neighbor. She was at home folding clothes when you entered her house. You dragged her to your house and to your bedroom forcibly when her mother was away. You undressed her and penetrated her vagina with your penis. She did not like what you did and it was a painful experience for her. She was bleeding. After raping the victim,

you threatened her not tell anyone and watched her when she confronted her mother. You were engaged in this incident when victim's younger sisters were watching. Victim was a much younger person than you. You later visited the victim and her family with your wife seeking traditional forgiveness.

- [4] Maximum penalty for Rape is life imprisonment. It is now well settled, and confirmed by the Supreme Court in Anand Abhay Raj CAV003.2014 that the tariff for rape of a juvenile is 10-16 years' imprisonment. You were charged under the Penal Code and the Courts in Fiji had imposed sentences up to 13 years' imprisonment to juvenile rape offenders under the Penal Code. [Vide State v Marawa [2004] FJHC 338; HAC0016T.2003S (23 April 2004)]
- [5] The offence of rape is generally regarded as the gravest of all sexual offences and on conviction an accused is liable to imprisonment for life. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on such offenders. "rape is the most serious form of sexual assault.... Society cannot condone any form of sexual assault on children" State v. AV [2009] FJHC 24; HAC 192 21.02.2009.
- [6] Children are the most vulnerable members of any society. It is the paramount duty of any right thinking member of our society as well as the State to protect them from such immoral, abominable, abhorrent and disgraceful behaviour of persons such as you and other persons inclined to commit sexual offences with children.
- [7] 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. Mohammed Kasim v. State [1994] FJCA 25; AAU 0021j.93S (27 May 1994)
- [8] Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji. 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 (per Paul Madigan J in State v Mario Tauvoli [2011] FJHC 216, HAC 027.2011).

Starting Point

- [9] Your actions demonstrate a total disregard of clearly defined societal, religious and traditional norms that prohibit any kind of sexual relationship between mellowed elderly people and children. Having considered the objective seriousness of the offence, culpability of the offending and the impact of your actions on the victim, I pick eleven years (11) as the starting point.

Rationale for sentencing

- [10] Sentencing is a critical component of our criminal justice system and contributes to providing justice and protecting the public. It does so by seeking to prevent offenders from continuing with, or undertaking, future criminal activity and contributes to the reduction of crime by denouncing criminal conduct and deterring offenders and potential offenders from committing crimes. At the same time, it is important that sentencing should lead to punishments that are not only just but are also seen by the public to be just and contribute to reparations for the victims of crimes. Additionally, sentencing should contribute to offender rehabilitation.

[11] Aggravated Circumstances

- I. The age gap between you and the victim was considerable. She was 12 and and you were 45 years of age. In principle, the younger the child and the greater the age gap between the offender and the victim, the higher then sentence should be.
- II. You were a neighbor of the victim at the time of offending. You breached the trust as the neighbor and exploited her vulnerability when you encroached on her privacy when her mother was away.
- III. You threatened the victim and instilled fear in her to cover up the offending.
- IV. You pleaded not guilty to the charge and maintained that position right throughout the trial. By doing so, you have not saved the young girl from giving evidence and reliving the ordeal. You have not shown remorse and repentance.

V. You committed this offence when victim's younger sisters were in the vicinity.

[12] **Mitigating Circumstances**

You are 45 years of age and married with a child of seven years. You work as a farmer earning \$ 30 per week.

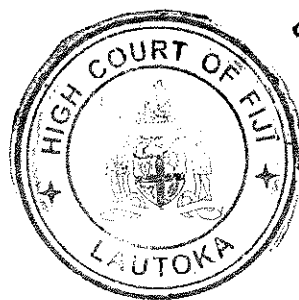
- I. You cooperated with police.
- II. You do not have previous convictions of sexual nature.
- III. You expressed remorse when you were found guilty and promised not to reoffend and sought mercy of this court and that of the victim.


[13] **Sentence**

I add three (3) years to the starting point for above mentioned aggravating factors bringing the interim sentence to fourteen (14) years' imprisonment. I deduct two (2) years for the above mentioned mitigating factors bringing the sentence to twelve (12) years' imprisonment. **Now your final sentence is twelve (12) years' imprisonment.**

[14] Acting under Section 18 of the Sentencing and Penalties Decree, and in keeping with guideline principles articulated in *Paula Tora v. The State Criminal Appeal* No.AAU 0063 of 2011 (27 February 2015), I impose a non-parole period of nine years. **You are eligible for parole after you have served nine (9) years in prison.**

[15] 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge
Judge

At Lautoka
24th November, 2016

Counsel:

- Office of the Director of Public Prosecution for State
- Office of the Legal Aid Commission for Accused