

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 09 OF 2014

STATE

-v-

NAVITALAI TATORO

Counsel : Ms. S Kiran for the State
Ms. V. Narara for the Accused

Dates of Trial : 25th , 26th April 2016

Date of Judgment: 22nd April, 2016

Date of Sentence: 02nd May, 2016

SENTENCE

1. On 22nd April 2016, NAVITALAI TATORO (Accused) was convicted after trial on the following count and now he comes before this Court for sentence:

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

NAVITALAI TATORO between the 31st of May 2012 and 1st of June 2012 at Lautoka in the Western Division unlawfully and indecently assaulted **SELINA TONU AROPIO**.

2. The facts were that:

Victim was fifteen years old, Form 3 student in 2012 when the incident took place. She was residing with her parents and siblings in Koroipita. Complainant's sister also lived with her in a small house that had no bedrooms. Accused's sister was living together with the accused and had a child from him. Accused was staying at victim's place and supporting her family financially. On the day of the incident, victim was sleeping on the floor. She woke up around 11 p.m. when she felt someone putting his hand between her thighs, going up to her undergarment. His hand was near but not inside her undergarment. She woke up and saw the accused. She tapped his hand. She was in a depressed condition when she went to school on the following morning. Head girl of her school noticed her condition and was told that she was sexually abused by her sister's partner. The matter was reported to police.

3. The maximum penalty for this offence is ten years' imprisonment. In ***Abdul Kaiyum HAC 160 of 2010***, it was stated that the range of sentences should be between two to eight years for the offence of Sexual Assault. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.

4. The tariff is set between two to eight years' imprisonment. in ***State v. Laca [2012] FJHC 1414 (14 November 2012)***, Justice Madigan referred to the United Kingdom's Legal Guidelines for Sentencing to guide the Courts in Fiji so that Courts are able to arrive at a sentence that matches the factual scenario of each individual case.

"A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines 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

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

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and 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 the genitalia)."

Aggravating Factors

5. In this case, the victim was particularly vulnerable. She was emotionally disturbed as a result of the offence and had difficulty to report the matter to any relative as the accused was an influential man in the household. He was supporting her family and living together with her sister. Accused exploited her vulnerability.
6. The accused did not show remorse by not admitting the offence. He did not save the complainant from giving evidence of sexual nature which would have been a distasteful experience for her.
7. Accused breached the trust when he approached his *de facto* partner's underage sister. His offending no doubt gives rise to domestic violence coming under the Domestic Violence Decree.

Mitigating Factors

8. He deserves some mitigation nevertheless. The accused is 22 years old, educated up


to Form six. He worked as a plumber earning \$ 215 a month and currently unemployed. This is his first offending. He has maintained a clear record thus far. He cooperated with police.

9. There was no pre planning or no violence used to commit the offence. Having considered the gravity of the offending and its impact on the victim. I pick a starting point of four years' imprisonment. I add two more years for above mentioned aggravating factors and deduct four years for his strong mitigation bringing the sentence back to two years. His final sentence is two years' imprisonment.
10. His counsel asks for leniency and that the sentence be suspended or an alternative sentence be imposed to keep to facilitate his rehabilitation as a young first offender. She referred to Suren Sing v The State [200] FJHC 264; 2FLR 127 and quoted Justice Shameem's observation on sentencing approach for young and first offenders.
11. Such leniency can only be afforded to a convict who expresses remorse by way of a guilty plea or some other expression of regret and there is none in this case. As Justice Goundar said in Vocea HAC 129 of 2009 (para 20):

"In the end, however, it is not possible for me to give undiminished weight to your previous good character and record of public service You were given power and authority. With power and authority comes an obligation of trust. You betrayed that trust and in the course of doing that, you diminished the very values that were your duty to uphold For this reason, a discharge or a bind over order is inappropriate."

12. Despite his powerful mitigation, the breach of trust and absence of remorse do not prevent me from imposing an immediate custodial sentence. **He will serve a term of imprisonment of two years and he will not be eligible for parole until he has served a minimum term of 12 months' imprisonment.**




Aruna Aluthge
Judge

At Lautoka
02nd May, 2016

Counsel:

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