

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No.: HAC 02 of 2015

STATE

V

TOMANI CERELALA

Counsels : Ms. A. Vavadakua for State
Mr. K. Ratule (Gibson & Co.) for the accused

Date of Judgment : 6 May 2016

Date of Sentence : 11 May 2016

SENTENCE

- [1] The accused has been convicted of two counts of rape of his 10 year old niece in the year 2014 in Savusavu.
- [2] The facts were that the accused had a house in the village in which he lived alone.

- [3] On the first occasion he called Mere (not her real name) into the house. The two of them were inside alone. He placed her against a wall, removed her trousers and invaded her with a finger.
- [4] On the second occasion when he called her in he was lying on the bed. He gave her some money and then told her to lie down on the floor. He removed her clothes and his clothes, lay on top of her and started moving up and down. Mere said it was causing pain in her vagina because he was "putting it in".
- [5] She said that there were several occasions that he did this and on each occasion he would give her money to buy sweets and gum.
- [6] The incidents came to light when an Aunt noticed that she had unexplained sums of money and observations and persistent enquiry of Mere revealed the relationship.

Mitigation

- [7] In written submissions in mitigation, Counsel pleads for mercy. The accused is 49 years old and separated from his wife for 17 years. He has one son who lives in Suva. At the relevant time he was a farmer within the village
- [8] He is a first offender and is said to be very remorseful. The Court has noticed that remorse throughout his trial.
- [9] He has spent 17 months on remand whilst awaiting trial. The maximum penalty for rape is life imprisonment and the Supreme Court has said that sentences for rape of minors

should be a term of imprisonment of between 10 and 16 years.
(**Anand Abhay Raj** CAV003/2014).

[10] In following that case I take a starting point of 10 years.

Aggravation

[11] The abuse of a niece by her uncle is a serious breach of trust and the 37 years age difference makes it very much worse.

[12] The victim was a very shy and impressionable 10 year old at the time and these assaults would almost certainly scar her own development to sexual maturity. As this Court said in **Mario Tauvoli** [2011] FJHC 216:

“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”.

[13] A further aggravating feature in this case is that the accused enticed the girl with small gifts of money and sweets.

[14] For these aggravating features I add six years to the starting point bringing the sentence up to a term of 16 years.

[15] For his clear record and obvious remorse I deduct two years bringing the sentence down to 14 years.

[16] I deduct the 17 months he has spent in remand awaiting trial and the final sentence that this Court imposes for rape is twelve years and five months.

[17] That is the sentence to be imposed for each of the two counts of rape. These terms will be served concurrently and he will serve a minimum term of 9 years and 6 months before being eligible for parole.



P. K. Madigan

Judge



At Labasa

11 May 2016