

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 122 OF 2016

BETWEEN : STATE

AND : AA

Counsel : Ms. L. Latu for State
Mr. W. Nainima for the Accused

Date of Sentence : 21st of September 2016

PUNISHMENT

1. The names of the Juvenile and the Victim are suppressed.
2. You have been charged with three counts of Rape contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree, which carries maximum sentence of life imprisonment. The particulars of the offences are that;

First Count

AA between the 1st day of January 2014 and the 24th day of April 2015, at Hart Home Ba, in the Western Divison, had carnal knowledge of BB, a child under the age of 13 years with his penis,

Second Count,

AA on the 20th day of September 2015, at Hart Home Ba, in the Western Division penetrated the mouth of BB, a child under the age of 13 years with his penis,

Third Count,

AA on the 27th day of September 2015, at Hart Home Ba, in the Western Division penetrated the mouth of BB, a child under the age of 13 years with his penis,

3. You were a juvenile during the time material for these three offences and you are now a nineteen years old young person. Hence, I punish you for these three offences pursuant to the applicable provisions of the Juvenile Act.
4. You pleaded guilty for these three offences in the presence of your counsel on the 31st day of August 2016. Having satisfied that you have fully comprehended and understood the consequences of your plea of guilt, I now proceed to punish you as follows.

5. The summary of fact, which was read over to you and admitted by you in the open court reveals that you have committed these crimes on a child victim who was ten years old in the year 2015.
6. In respect of the first count, you accompanied the victim and other children to collect fire wood in sometimes in 2014. You then told the victim to return to the bush after taking his firewood home. The victim did as he was asked. You then removed the victim's trousers and inserted your penis into the anus of the victim and rubbed it until you ejaculated.
7. In respect of the second count it was revealed that you came to the house of the victim in the evening of 20th of September 2016 while he was sleeping with his siblings. You asked the victim to come to your house, which he refused. You then took the victim to your house and made him to perform oral sex until you ejaculated.
8. In respect of the third count as charged in the information, it was revealed that you and the victim together with other children at Ba Hart Home went to help a neighbour to shift their belongings on the 27th of September 2015. While doing that you told other children to leave the place. But you stopped the victim leaving the place. You then closed the door and made the victim to perform oral sex until you ejaculated.
9. This is a case where a seventeen years old Juvenile preying on a ten years old juvenile in order to satisfy his lustful sexual gratification. Rape is the worst form of sexual assault, which infringes the life of the victim both physiologically and

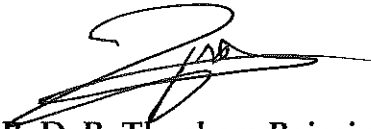
physically. Specially the effect of such heinous sexual assault on a ten years old child is unmeasurable.

10. Section 30 (2) of the Juvenile Act does not permit the court to imprison a young person between fourteen to eighteen years old for an offence. However, if the court certifies that the young person is of an unruly character that he cannot be detained in an approved institution or that he is of a depraved character and not suitable to be detained, the court could imprison a young person for a period up to two years pursuant to Section 30 (3) of the Juvenile Act.
11. The tariff for rape of a child is between 10 to 16 years of imprisonment. (**Anand Abhay Raj vs State [2014] FJSC 12; CAV0003.2014 (20 August 2014)**),. However, Section 30 (2) and (3) of the Juvenile Act restrict the court to a maximum term of two years imprisonment for a juvenile offender. Therefore, the court in sentencing juvenile offender for crimes of this nature, have to consider the seriousness of the offences of this nature as well as the purpose of the legislature not to have juvenile imprisoned for more than two years.
12. Having considered the summary of fact, I find that you have planned and manipulatively exploited the vulnerability and innocence of the victim in order to satisfy your sexual gratification. You breached the trust the victim reposed in you as an elderly neighbour. You have warned the victim not to tell anyone about these incidents. I consider these factors as aggravating factors of these offending.
13. The Social Background Report filed by the Social Welfare Officer reveals that you were also a victim of an incident similar to this offence. You are currently

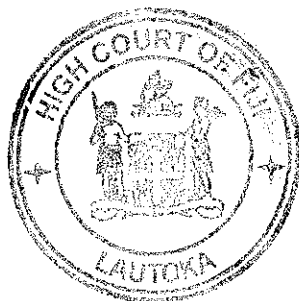
schooling at DAV College in year 11. The Social Background Report states that you have shown positive improvements in your behavior and now living with your elder sister and her family. You have shown your remorse in pleading guilty at the first available opportunity and save the victim from recalling all those traumatic experience he had undergone. I consider these factors as mitigating grounds in your favour.

14. Having considered the reasons discussed above, I select two (2) years as the starting point for each of these three counts. I increase two (2) years for the above discussed aggravating grounds reaching four (4) years as an interim imprisonment. I reduce one (1) year for the early plea of guilty and further one (1) year for other mitigating grounds as discussed above. Your final punishment is two (2) years imprisonment for each of these three counts.
15. Having considered your age and the positive response you have demonstrated as per the Social Background Report, it is my opinion that a custodial punishment would adversely affect your future as well as your education. Hence, I suspend your punishment for a period of five years pursuant to Section 26 of the Sentencing and Penalties Decree.
16. I accordingly punish you for a period of two (2) years imprisonment for each of these three counts of Rape contrary to Section 207 (1) and (2) (c) and (3) of the Crimes Decree. I suspend the above punishment for a period of five (5) years pursuant to Section 26 of the Sentencing and Penalties Decree.

17. If you commit any crime during the period of five (5) years and found guilty by the court you are liable to be charge and prosecute for an offence in pursuant of section 28 of the Sentencing and Penalties Decree.
18. Thirty (30) days to appeal to the Fiji Court of Appeal.


R. D. R. Thushara Rajasinghe
Judge

At Lautoka
21st of September 2016



Solicitors : Office of the Director of Public Prosecutions
Office of Legal Aid Commission