

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

Criminal Case No. HAC 02 of 2017

STATE

V

LUKE MACU

Counsel : Ms. A. Vavadakua for State

Accused in person

Date Sentence : 30th March, 2017

SENTENCE

1. Luke Macu, upon pleading guilty, you stand convicted for the following offences;

FIRST COUNT

Statement of Offence

SEXUAL ASSAULT: *Contrary to section 210 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

LUKE MACU on the 3rd day of January 2017, at Nabavatu Village, in Dreketi, in the Northern Division, unlawfully and indecently assaulted L.A.M, by licking her vagina.

SECOND (ALTERNATIVE) COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

LUKE MACU on the 3rd day of January 2017, at Nabavatu Village, in Dreketi, in the Northern Division, penetrated the vagina of L.A.M, a child under the age of 13 years.

2. According to the summary of facts you have admitted, the relevant facts are as follows;

- “1. The victim in this matter is ... LAM, who was born on 28 January 2004 and was 12 years, 11 months and 6 days old at the material time.
2. Luke Macu (the accused), is a 34 year old farmer, residing at Nabavatu Village, Dreketi, Macuata in Savusavu and is LAM's father.
3. At about 0300 hours on 03 January 2017, the accused had returned to his home where he lived with his family, including his wife and four children. The accused had been consuming beer with others before he reached home. Upon reaching home, the accused found his wife and children asleep in their living room.
4. According to LAM, she awoke to find the accused, smelling heavily of beer, lying beside her with his left leg wrapped around her while he was trying to pull down LAM's undergarment (panty). The accused started to lick LAM's face and LAM told the accused to stop what he was doing. The accused then pulled LAM towards the bedroom and LAM tried to shout but the accused blocked her mouth. Inside the bedroom, the accused asked LAM if she could lie on top of him and LAM replied no. The accused then pulled LAM outside of the house.

5. *As LAM was standing, the accused spread both of her legs and forcefully pulled down her shorts and undergarment (panty) and started to lick her vagina. The accused then pulled LAM down whereby she was sitting on his stomach.*
 6. *The accused then laid LAM down on the grass and spat on his hand and rubbed his saliva on his penis. The accused then penetrated LAM's vagina with his fingers and LAM's vagina and LAM felt his fingers inside her vagina. LAM told the accused to stop but he did not and after a while he stood up and told LAM not to tell her mother about the incident."*
3. By committing the above offences being the victim's biological father, you have given the victim a disgusting experience that would have seared into her memories by now. This experience will no doubt haunt her throughout her lifetime. In the victim impact statement it is stated that this incident had resulted in the victim having poor concentration, she is confused, shocked and feeling lost.
 4. You have pleaded guilty to the charges on the earliest possible opportunity. Thereby, you have prevented the child victim from having to relive her miserable experience before this court. Your conduct before this court indicated genuine remorse.
 5. When the offence of sexual assault under section 210(1) of the Crimes Act 2009 ("Crimes Act") involves the bringing into contact any part of the genitalia of a person with any part of the mouth of a person, the maximum sentence is 14 years imprisonment in terms of section 210(2) of the Crimes Act. In the case of *State v Ratawake* [2016] FJHC 1078; HAC223.2015 (28 November 2016), Fernando J. suggested an imprisonment term between 5 to 10 years as the tariff for the offence of sexual assault punishable under section 210(2) of the Crimes Act.

6. The maximum sentence for the offence of rape under section 207(1) of the Crimes Act is imprisonment for life and the sentencing tariff for rape of a child is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12; CAV 003 of 2014).

7. The two offences you are convicted of are founded on the same facts and they are of similar character. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), I consider it appropriate to impose an aggregate sentence of imprisonment in respect of the two offences. Section 17 of the Sentencing and Penalties Decree reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

8. I select 12 years imprisonment as the starting point of your aggregate sentence.

9. I consider the following as aggravating factors in this case;

- a) you are the victim's father, there is a serious breach of trust;
- b) you attacked the victim while she was asleep; and
- c) you have used force on her before you committed the two offences.

10. I consider the following as mitigating factors;

- a) you are a first offender and you are 34 years old;
- b) you have pleaded guilty when the Information was first read over to you;

- c) you cooperated with the police; and
- d) you are remorseful.

11. Considering the aforementioned aggravating factors, I increase your sentence by 8 years.

12. Considering the mitigating factors other than the fact that you have pleaded guilty, I deduct 4 years. Now your sentence is 16 years imprisonment.

13. In view of your early guilty plea, I deduct 6 years of your sentence.

14. Accordingly, I sentence you to an imprisonment term of 10 years. I order that you are not eligible to be released on parole until you serve 07 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.

15. Section 24 of the Sentencing and the Penalties Act reads thus;

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

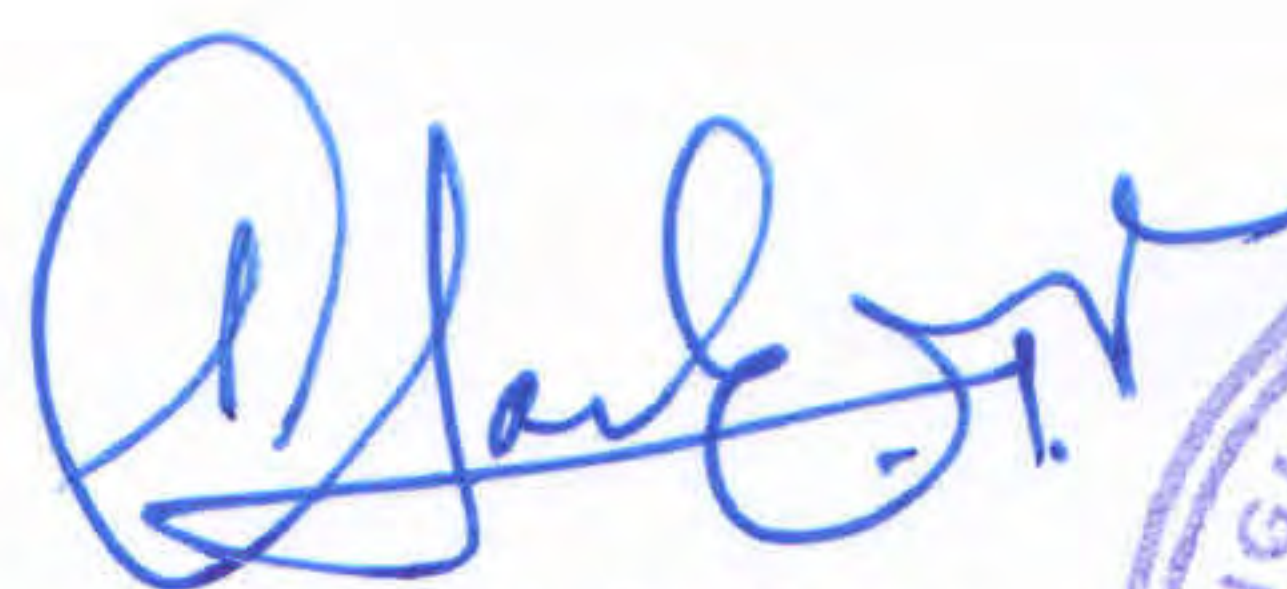
16. The prosecution had informed that you are in custody for this matter since 03/01/17. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that a period of 3 months should be considered as served in terms of the provisions of section 24 of the Sentencing and the Penalties Act.

17. In the result, you are sentenced to an imprisonment term of 10 years with a non-parole period of 07 years. Considering the time spent in remand, the time remaining to be served is as follows;

Head Sentence – 09 years and 09 months

Non-parole period – 06 years and 09 months

18. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera

JUDGE



Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.