

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 400 of 2016

[CRIMINAL JURISDICTION]

STATE

V

INIA RAYALO

Counsel : Ms. S. Serukai for State
Mr. L. Qetaki and Ms. E. Radrole for Accused

Dates of Hearing : 25th - 27th April 2017

Date of Summing up: 28th April 2017

Date of Judgment : 01st May 2017

Date of Sentence : 02nd May 2017

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "TN".)

SENTENCE


1. Inia Rayalo, you stand convicted of the offence of sexual assault under section 210(1) of the Crimes Act 2009 after trial.
2. On 22/10/16 you sexually assaulted the victim who was four years old by touching her genital area after you removed her undergarments.
3. The offence of sexual assault under section 210(1) of the Crimes Act carries a maximum sentence of 10 years imprisonment. Following the case of *State v Laca*

[2012] FJHC 1414; HAC 252 of 2011 (14 November 2012), this court has been applying an imprisonment term between 2 to 8 years as the tariff for sexual assault.

4. I take 2 years imprisonment as the starting point of your sentence.
5. I consider the following as aggravating factors;
 - a) the victim was 4 years old at the time of the offence;
 - b) age difference between you and the victim is 19 years; and
 - c) you took advantage of the victims naivety and vulnerability.
6. Your counsel submitted that you were born as a mentally retarded child with heart problems and therefore you need to be closely monitored inside the prison. No evidence was presented before this court during the trial regarding your medical condition. Moreover, no material was placed before this court to demonstrate that this court in the exercise of the jurisdiction to conduct criminal trials can interfere with the manner in which a prisoner should be dealt with inside the prison.
7. It is up to your counsel to make necessary representations on your behalf to the prison authorities in order to secure any special treatment inside the prison if it is warranted by your medical condition.
8. Your counsel also submits as your personal circumstances that you are 23 years old, unmarried and you are engaged in farming.
9. Having considered all material placed before this court for the purpose of sentencing, I find that the only mitigating factor in this case is the fact that you are a first offender.
10. Considering the above aggravating factors, I add 04 years to the starting point. Now your sentence is 06 years imprisonment.

11. I deduct 1 year of your sentence considering the fact that you are a young first offender.
12. I hereby sentence you for a term of 05 years imprisonment. I order that you are not eligible to be released on parole until you serve 03 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act 2009.
13. Section 24 of the Sentencing and the Penalties Decree 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."
14. The prosecution submits that you have been in custody since 31/10/16. The period you were in custody shall be regarded as a period of imprisonment already served. I hold that the period to be considered as served should be 06 months.
15. In the result, you are sentenced to 05 years imprisonment with a non-parole period of 03 years. Considering the time spent in custody, the time remaining to be served is as follows;
Head Sentence - 04 years, and 06 months
Non-parole period - 02 years, and 06 months
16. 30 days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitor for the Accused : Legal Aid Commission, Suva.