

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 022 OF 2017LAB

STATE

V

GABIRIELE MARAWA

Counsels : Mr. R. Kumar for State
Mr. A. Paka for Accused

Hearings : 21 and 26 July, 2017

Sentence : 28 July, 2017

SENTENCE

1. On 21 July 2017, in the presence of his counsel, the following information was put to the accused:

STATEMENT OF OFFENCE

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

PARTICULARS OF OFFENCE

GABIRIELE MARAWA, on the 11th day of April 2017, at Delaivione, Taveuni in the Northern Division, with his finger penetrated the vagina of **K.M**, a child under the age of 13 years.

2. The information was read and explained to the accused. He said, he understood the same. He then pleaded guilty to the charge. The matter was adjourned to the 26 July 2017 to enable the prosecution to prepare a proper summary of facts.
3. On 26 July 2017, the prosecution read the following summary of facts to court:
 - i) The accused in this matter is Gabriele Marawa, a 22 year old farmer of Delaivione, Taveuni. On 11 April 2017 the accused and his de facto wife namely, Asela Dani, were living together with their infant daughter namely, **K.M**, at their home in Delaivione, Taveuni. **K.M** was born on 12 June 2015.
 - ii) In the morning of 12 April 2017, while at their said home, the accused sent Asela Dani to get his cane knife from a neighbouring village. Asela Dani left out to get the accused's cane knife leaving **K.M** alone at their home with only the accused. **K.M** was asleep during this time.
 - iii) Soon after Asela Dani left to get the accused's cane knife, the accused had then inserted his finger into **K.M**'s vagina whilst she was asleep after which he pulled his finger out from her vagina.. Upon pulling his finger out of **K.M**'s vagina the accused noticed blood coming out of her vagina and changed **K.M**'s diaper and clothes.
 - iv) Asela Dani later returned to their said home and discovered the injury to **K.M**'s vagina after which she reported the matter to the Police as she suspected the accused to have caused the said injury to **K.M**'s vagina.
 - v) In the afternoon of 11 April 2017, **K.M** was medically examined at Taveuni Hospital where the specific medical findings showed penetration injuries into **K.M**'s vagina (*attached: Medical Report of K.M, dated 11/04/17*).
 - vi) The accused was arrested and interviewed under caution whereby he admitted to having inserted his finger into **K.M**'s vagina on 11 April 2017. The accused was charged with one count of rape. The accused has nil previous convictions.

4. The court later checked with defence counsel that the accused was admitting to all elements of the offence. Defence Counsel told the court that the accused admitted penetrating the female child complainant's vagina with his finger on 11 April 2017. Defence Counsel also said, the accused knew the child complainant was under 13 years old, and thus incapable in law to consent to the accused's above action. He also admitted that he was presumed in law to know that the child complainant was incapable in law of giving her consent to his above action. On the basis of the above admissions, the court found the accused guilty as charged and convicted him accordingly.
5. In **State v Katokaiti Tutara**, Criminal Case No. HAC 050 of 2014LAB. High Court, Labasa, I said the following, "...Rape" as a sexual offence, is at the top of the criminal calendar, as far as sexual offences were concerned. It involved an attack on a person's dignity. It is also an attack on a person's right to privacy. It intrudes into a person's right to enjoy a quality life. Those who find themselves on the wrong side of the law must not expect leniency. The law makers of this country had prescribed a maximum sentence of life imprisonment for those found guilty of rape (see section 207 (1) of the Crimes Decree 2009). The Honourable Chief Justice via the Supreme Court case of **Anand Abay Raj vs The State**, Criminal Appeal Case No. CAV 0003 of 2014, had set the tariff for the rape of juveniles a sentence between 10 to 16 years imprisonment. The actual sentence will depend on the mitigating and aggravating factors".
6. The aggravating factors in this case were as follows:
 - (i) Breach of Trust. The female complainant was your daughter. She was 1 year 10 months old at the time of the offence. As the father, you were supposed to look after and care for her. You were supposed to make sure she was free from harm at such a young age. However, you did the unthinkable by inserting your finger into her vagina. As a result, you injured her vagina. Your action was a serious breach of parental trust. You must not complain when your liberty is taken away to pay for your crime.
 - (ii) Rape of a child. As I had said before, this offence is becoming prevalent in our community. Time and time again, the court had issued warnings and deterrent sentences against those who abuse children. A deterrent sentence will be given to you to re-inforce the court's hard stand on the offence.

- (iii) By offending against the complainant, you had no regard whatsoever to her right to a quality life, her dignity and her right to privacy. You also had no regard to her right as a human being.
7. The mitigating factors were as follows:
- (i) At the age of 22 years, this is your first offence;
 - (ii) You pleaded guilty to the charge approximately 3 months after first call in the High Court. You had saved the court's time.
 - (iii) You had been remanded in custody since 18 April 2017, that is, approximately 3 months 10 days ago.
8. I start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors, making a total sentence of 16 years imprisonment. For time already served while remanded in custody, I deduct 4 months, leaving a balance of 15 years 8 months. For being a first offender, I deduct 1 year 8 months, leaving a balance of 14 years imprisonment. For pleading guilty, I deduct 3 years, leaving a balance of 11 years imprisonment.
9. Mr. Gabriele Marawa, for finger raping your daughter on 11 April 2017 at Taveuni in the Northern Division, I sentence you to 11 years imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith.
10. You have 30 days to appeal to the Court of Appeal.



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JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Labasa**
Solicitor for the Accused : **Legal Aid Commission, Labasa**