

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 438 of 2016

[CRIMINAL JURISDICTION]

STATE

V

PENI NAMARUA

Counsel : Ms. K. Semisi for State
Ms. P. Lal for Accused

Sentence on : 10th August 2017

SENTENCE

1. Peni Namarua, upon pleading guilty, you stand convicted for the following offences;

FIRST COUNT

Statement of Offence

RAPE: *contrary to section 207 (1) and (2)(a) and 3 of the Crimes Act 2009.*

Particulars of Offence

PENI NAMARUA *between the 1st day of January 2013 and 31st day of December 2013, at Tamavua in the Central Division, penetrated the anus of Peniasi Nateba, a child under the age of thirteen years, with his penis without his consent.*

SECOND COUNT

Statement of Offence

RAPE: *contrary to section 207 (1) and (2)(a) and 3 of the Crimes Act 2009.*

Particulars of Offence

PENI NAMARUA *between the 1st day of January 2014 and 31st day of*

December 2014, at Tamavua in the Central Division, penetrated the anus of Peniasi Nateba, a child under the age of thirteen years, with his penis without his consent.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

PENI NAMARUA between the 1st day of January 2013 and 31st day of December 2013, at Tamavua in the Central Division, unlawfully and indecently assaulted Peniasi Nateba.

FOURTH COUNT

Representative Count

Statement of Offence

SEXUAL ASSAULT: contrary to section 210(1)(b) of the Crimes Act 2009.

Particulars of Offence

PENI NAMARUA between the 1st day of January 2013 and 31st day of December 2014, at Tamavua in the Central Division, procured Mereoni Laufili without her consent, to witness an act of gross indecency by Peni Namarua.

2. You have admitted the following summary of facts;

Summary of Facts:

The Accused:

Peni Namarua - 60 years of age, unemployed of Tamavua Village.

The Complainants:

(PW1) **Peniasi Nateba** - 5th November 2008, 9 years of age, class 3 student of Annesley Infant School of Tamavua Village.

(PW2) **Mereoni Laufili** - 12th October 2009, 8 years of age, class 2 student of Annesley Infant School of Tamavua Village.

1. *The accused and two complainants between 2013 and 2014 resided in the same area namely: Tamavua Village. The accused's house was located just beside PW1's residence.*
2. *On an unknown date in 2013, the accused told PW1 and PW2 to come into his house and in the presence of PW2, the accused told PW1 to remove his clothes. The accused then inserted his erected penis into PW1's anus which caused him considerable pain.*
3. *PW2 was made to watch the accused carry out the abovementioned act on PW1.*
4. *The accused after he had done the said act threatened PW1 not to inform anyone about what had happened, and as a result of such threat PW1 was in fear of the accused and did not relay the incident to anyone immediately after it happened.*
5. *Apart from the incident in 2013, the accused on an unknown date in 2014, again inserted his erected penis into PW1's anus.*
6. *On another occasion in 2013, the accused told PW1 and PW2 to come into his house. Whilst inside the house, the accused told PW1 to touch his erected penis and after being told this PW1 touched the accused's penis and massaged it in an upward-downward motion. PW1 did not consent to massaging the accused's erected penis.*
7. *Whilst the accused made PW1 do this, PW2 was made to watch. PW2 did not consent to watching PW1 massage the accused's erected penis.*
8. *The accused was interviewed under caution in the i-taukei language by DC4579 Josia Soro on the 29th of November 2016 at the Samabula Police station CID office.*
9. *The accused when questioned voluntarily admitted to calling PW1 into his house whereby he proceeded to undress PW1 by removing his pants. By this time the accused had already taken off his pants. He then told PW1 to touch his penis and further admitted that whilst PW1 lay down on the ground, he lay on top of him with both his knees on the floor.*
10. *The accused admitted that he had called PW1 into his house because he had wanted to have intercourse with him. (Questions and Answers 49-58 and 67 of the said interview are relevant).*

3. 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).
4. 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.
5. The four offences you are convicted of forms a series of offences 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 four 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."

6. I select 12 years imprisonment as the starting point of your aggregate sentence.
7. I consider the following as aggravating factors in this case;
 - a) There is a substantial age difference between you and the victims. You being an elder in the community have a responsibility to look after young children; and
 - b) You exploited the vulnerability and naivety of the victims.

8. I consider the following as mitigating factors;
 - a) You are regarded as a first offender;
 - 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.

9. Your counsel had submitted the following *inter alia* as your personal circumstances;
 - a) You are 61 years old and a widower; and
 - b) You are sickly, cannot walk without the aid of a walking stick.

10. Considering the aforementioned aggravating factors, I increase your sentence by 05 years.

11. Considering the mitigating factors other than the early guilty plea, I deduct 02 years. Now your sentence is 15 years imprisonment.

12. In view of your early guilty plea, I deduct 05 years of your sentence.

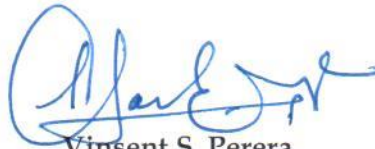
13. Accordingly, I sentence you to an imprisonment term of 10 years. I order that you are not eligible to be released on parole until you serve 07 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.

14. 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.”

15. I note that you were first produced before the magistrate court on 01/12/16 and since that date you have been in remand. 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 09 months should be considered as served in terms of the provisions of section 24 of the Sentencing and the Penalties Act.
16. 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 03 months
- Non-parole period - 06 years and 03 months
17. 30 days to appeal to the Court of Appeal.




Vincent S. Perera
JUDGE

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