

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 49 OF 2016LAB

STATE

V

TALAIASI MUALUVU

Counsels : Mr. L. Fotofili for State
In Person

Sentence : 03 February 2017

SENTENCE

1. The Accused is being charged with one count of Rape contrary to Section 207 (1) (a) and (2)(b) of the Crimes Act, which carries a maximum penalty life imprisonment and one count of Sexual Assault, contrary to Section 210 (1) (a) and (b) of the Crimes Act, which carries a maximum penalty of ten years of imprisonment.
2. The accused pleaded guilty for the two counts on his own free will on the 1st of February 2017. Having satisfied that the accused had fully comprehended his plea of guilty and its consequences, I now convict the accused to the offence of rape and sexual assault as charged in the information.

3. It was revealed by the summery of fact, which you admitted in open court, that the victim is your sister. She is eight years old. You took her to a nearby place beside the road, while you were waiting for your mother with the victim and then removed her undergarment. You then licked and touched her vagina, before inserting your tongue into her vagina. You then told her not to tell the father about this.
4. Rape is a worse form of sexual assault, which infringe the life of the victim, both physically and psychologically. Such physical and psychological impact on eight years old young girl could have, changed not only her life forever but also the members of her family. Sexual Assaults of this nature on young children will adversely affect in their biological development and social maturity, causing perilous social consequences.
5. Having considered the serious nature of this offence, I now turn my attention to consider the purpose of this sentence. The sexual violence and assault on the female, especially young and small girls is a growing concern of the society. Accordingly, the main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature.
6. Hon. Chief Justice Gates in Anand Abhay Raj v State [2014] FJSC 12; CAV0003.2014 (20 August 2014) held that the tariff for rape of a child is between 10 -16 years' imprisonment period.
7. Justice Madigan in State v Epeli Ratabaceca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012) has expounded the tariff for the offence of Sexual Assault as between 2 years to 8 years' imprisonment. Having considered the sentencing guidelines adopted in United Kingdom, His Lordship has further discussed the applicable sentencing approach for the offence of Sexual Assault, where his lordship held that;

"The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did

say in Abdul Kaiyum HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.

A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

- i) Contact between the naked genitalia of the offender and another part of the victim's body;*
- ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
- iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.*


Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)"

8. In view of the seriousness of the offence and level of culpability, I select thirteen (13) years as the starting point for the count of Rape and four (4) years for the offence of sexual assault.
9. You have not only breached the trust of your younger sister but also your family by committing this crime. By committing this crime on the victim, you denied her childhood and the natural growth of her life. Being the brother of the victim, it was your duty and responsibility to provide the victim necessary protection and care with love and affection. By committing this crime, you have ignored to fulfill such duties and responsibilities. The age different between you and the victim was about 14 years at the time of this crimes took place. I consider these factors as aggravating circumstance of this crime.
10. You are not a first offender. Hence I do not consider your previous good character in your favour. You pleaded guilty at the first available opportunity, for which you are entitled for a substantive discount.
11. Having considered the above discuss aggravating factors, I increased 3 years to reach interim period of imprisonment of sixteen (16) years for Rape and seven (7) years for Sexual Assault. Considering the early plea of guilty, I reduce four (4) years for the offence of Rape and three years for the offence of Sexual Assault, reaching twelve (12) years and four (4) years respectively. I reduce further one (1) year for your young age, reaching the final sentence of eleven (11) years for the offence of Rape and three (3) years for the offence of Sexual Assault.
12. You have spent five months in remand custody prior to this sentence. I accordingly reduce further five months making your imprisonment period for the offence of Rape as

ten (10) years and seven (7) months and for the offence of Sexual Assault as two (2) years and seven (7) months imprisonment period. Both sentences to be served concurrently.

13. Having considered your young age and opportunity for rehabilitation, I find nine years of non parole period would serve the purpose of this sentencing.
14. I accordingly sentence you for a period of Ten (10) years and Seven (7) months imprisonment for the offence of Rape contrary to Section 207 (1) (a) and (2) (b) of the Crimes Act and Two (2) years and Seven (7) months imprisonment for the offence of Sexual Assault, contrary to Section 210 (1) (a) and (b) of the Crimes Act. Both sentences to be served concurrently. Moreover this imprisonment period of Ten (10) years and Seven (7) months to be served concurrently with the remaining period of the existing imprisonment. You are not eligible for parole for a period of nine (9) years.
15. Thirty (30) days to appeal to the Fiji Court of Appeal.


R.T. Rajasinghe
JUDGE



Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : In Person