

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 163 of 2016

STATE

v.

SR

Counsel: Ms. K. Semisi for State
Ms. L. Manulevu for Accused

Hearing: 15th to 18th August 2017

Summing Up: 21st August 2017

Judgment: 22nd August 2017

Sentence: 24th August 2017

SENTENCE

1. The Accused is found guilty and convicted for three counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum sentence of life imprisonment and two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act which carries a maximum penalty of ten years imprisonment.
2. It was proved at the conclusion of the hearing that you, being the father of the victim, came to her while she was sleeping on the 29th of March 2014. You then forcefully had sexual intercourse with her without her consent. The victim was 19 years old at that time. Before you had sexual intercourse, you indecently and unlawfully kissed her cheek and neck. On the 13th of April 2014, you again came to her while she was lying in the bed. You then unlawfully and indecently kissed her lips. After that, you forcefully had sexual intercourse with her without her consent. You again forcefully had sexual intercourse with the victim

without her consent on the 16th of April 2014. The victim is your biological daughter. She has been growing up with her mother as you have divorced her mother, when she was few months old. The victim came to see you on the 29th of March 2014 after a long separation of nineteen years.

3. This is a case of incestuous father, using his daughter for his sexual gratification. Many cultures have developed laws, rules and norms, prohibiting sexual relationship between closely related persons. Incestuous relationship of parent and children has condemned and deprecated by many societies. Accordingly, it appears that a father, using his own daughter as surrogated sexual partner is not only against the acceptable social norms and values, but also the acceptable human behaviours.
4. Parents are the trusted and dependable persons that a person normally has in their lives. Turning that trusted dependable person into a monstrous demon who penetrated in to the innocent life of his own child and destroy it with his own lustful sexual satisfaction, would undoubtedly warrant a deterrence punishment in sentencing. Incest is a rape by extortion, in which the victim's relationship with the perpetrator becomes a weapon used to control her.
5. Having considered the serious nature of this offence, I now turn my attention to consider the purpose of this sentence. 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. A harsh and long custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offences and also reflect that the civilized society denounce such crimes without any reservation.
6. The tariff for the offence of rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period.

7. Justice Madigan in State v Epeli Ratabacaca 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, 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. The victim impact report states that this crime has adversely affected the victim emotionally and psychologically. Hence, I find the level of harm caused to the victim is substantially high.
9. You have unleashed these disgraceful sexual exploitations on the victim when she was not in a position to seek any assistance or find a way to escape. She was in your house which is located in a remote forest area away from the village. You knew that she could not go back, even to the nearest village, by her own as it takes few more hours to go on foot through the forest. You manipulatively committed these crimes in the night when she was getting ready to sleep. Hence, it appears that you found an opportunity, where the victim was vulnerable without any prospects of escaping, in order to satisfy your heinous and lustful sexual gratification. You have threatened the victim saying that you will kill her if she tells anyone about this incident. In respect of the second incident of Rape, you have grabbed her hand and pulled her down to the floor when she refused to oblige to your sexual demand. Hence, I find the degree of culpability in these offending is substantially high.
10. In view of the seriousness of this crime, and the level of harm and culpability, I select ten (10) years as the starting point for each count of Rape and two (2) years for each count of Sexual Assault.
11. You have blatantly breached the trust reposed in you by the victim as her Father. By committing this crime on the victim, you denied the natural growth of her life. Being the biological father of the victim, it was your duty and responsibility to provide the victim necessary protection and care with love and affection, specially when she came to see you after long separation of nineteen years. By committing this crime, you have ignored to fulfill such duties and responsibilities. The age different between you and the victim was about 26 years at the time of this crime took place. I consider these factors as aggravating circumstance of this crime.

12. The learned counsel for the defence submitted in mitigation about your family circumstances. You are divorced and have two children. However, the family background of the offenders of this nature has very minimal mitigatory value.
13. You are a first offender. Therefore, it is appropriate to give you some substantial discount for your previous good character. Beside of your previous good character, I do not find any mitigating factor in your favour.
14. In view of the above discussed aggravating circumstances, I increased four (4) years to reach interim imprisonment of fourteen (14) years for each count of rape and six (6) years interim imprisonment for each count of Sexual Assault. I reduce one (1) year for you previous unblemished character. Your final sentence has now reached to thirteen (13) years of imprisonment for each count of Rape and five (5) years of imprisonment for each count of Sexual Assault.
15. Having considered your age and opportunities for rehabilitation, I find eleven (11) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

16. Accordingly, I sentence you for a **period of thirteen (13) years imprisonment** for each count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act as charged under first, third and fifth counts in the information. Furthermore, I sentence you for a **period of five (5) years imprisonment** for each count of Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act as charged under second and fourth counts in the information.
17. All of these sentences to be served concurrently. I further order that you are not eligible for any parole for a period of eleven (11) years.

Actual Period of Sentence

18. You have been in remand custody for this case for a period of one (1) year and two (2) months as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of one (1) year and two (2) months as a period of imprisonment that have already been served by you.
19. **Accordingly your actual sentencing period is eleven (11) years and ten (10) months of imprisonment period, with nine (9) year and ten (10) months of non-parole period.**
20. Since this incident involves with domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent domestic violence restraining order against the accused with standard non-molestation conditions and no contact conditions pursuant to sections 24 and 28 of the Domestic Violence Act. The above domestic violence restraining order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of section 77 of the Domestic Violence Act.
21. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
24th August 2017

Solicitors
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused