

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Crim. Case No: HAC 281 of 2016

STATE

v.

GV

Counsel: Ms. K. Semisi for State
Ms. V. Filipe for Accused

Hearing: 21st, 22nd, 23rd and 25th August 2017

Summing Up: 28th August 2017

Judgment: 29th August 2017

Sentence: 30th August 2017

SENTENCE

1. The names of the victim and the accused are suppressed.
2. The Accused is found guilty and convicted for one count of Rape, contrary to Section 207 (1), (2) (b) and (3) of the Crimes Act, which carries a maximum sentence of life imprisonment.

3. It was proved at the conclusion of the hearing that you entered into the bathroom while the victim was washing her uniform in it in the evening of 10th of July 2016. You then pulled her shorts down and penetrated the vagina of the victim with your tongue. You are related to the victim as her uncle. The victim was eleven years old at the time of this crime took place.
4. This is a case of sexually exploitation of a child by a known relative within her own domestic environment. She is your niece and the daughter of your wife's sister. The family environment is the most protective and appropriate environment for a child to grow up with confidence and safety. Close family members and relatives are the most trusted and dependable people surrounded during the developmental stages of a child. Therefore, sexually assaulting a child within her own family environment by a known relative is one of the outrageous forms of sexual crime.
5. In view of the seriousness of this offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Hence, the purpose of this sentence is founded on the principle of deterrence and protection of community. Moreover, the court must demonstrate in sentencing that the offenders of this nature are socially abhorrent.
6. Hon. Chief Justice Gates in Anand Abhay Raj [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. The victim was eleven years old at that time. It is an undeniable certainty that a crime of this nature adversely affects a child of this age. Hence, I find the level of harm is substantially high in this crime.
8. You have committed this disgraceful sexual exploitation on the victim when she was not in a position to find a way to escape. You found that she was alone in the bathroom, when you came to the bathroom to answer the nature's call. At that point you found an opportunity to satisfy your disgraceful sexual gratification. You then entered into the

bathroom and stood at the door. The victim in her evidence said that she wanted to go out, but you were standing at the door. 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. I accordingly find the degree of culpability in this offending is substantially high.

9. In view of the seriousness of this crime, and the level of harm and culpability, I select twelve (12) years as the starting point.
10. You have blatantly breached the trust reposed in you by the victim as her uncle. Being the uncle 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 difference between you and the victim was about twenty eight (28) years at the time of this crime took place. I consider these factors as aggravating circumstances of this crime.
11. The learned counsel for the defence submitted in mitigation about your family circumstances. You are married and have four children. You are forty two (42) years old. However, the family background of the offenders of this nature has very minimal mitigatory value.
12. 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.
13. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of fifteen (15) years. I reduce one (1) year for you previous unblemished character. Your final sentence has now reached to fourteen (14) years of imprisonment.

14. Having considered the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find thirteen (13) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence


15. Accordingly, I sentence you for a period of **fourteen (14) years imprisonment** for the offence of Rape, contrary to Section 207 (1), (2) (b) and (3) of the Crimes Act. I further order that you are not eligible for any parole for a period of **thirteen (13) years**.

Actual Period of Sentence

16. You have been in remand custody for this case for a period of one (1) year, one (1) month and fourteen (14) days 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.
17. **Accordingly your actual sentencing period is twelve (12) years and ten (10) months of imprisonment, with eleven (11) year and ten (10) months of non-parole period.**
18. 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 section 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.

19. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
30th August 2017

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