

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 16 OF 2016

STATE

V

KOAE BARERE

Counsels: Mr. R. Kumar for State
Ms. N. Mishra for Accused

Date of Trial : 11 October 2017
Date of Summing Up: 12 October 2017
Date of Sentence : 13 October 2017

SENTENCE

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

3. It was proved at the conclusion of the hearing that you, being the father of the complainant, came to her while she was sleeping with her sister in the night. You then went inside the mosquito net and removed her shorts and undergarment. Having done that, you penetrated her vagina with your tongue without her consent.
4. 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. A father, using his own daughter as surrogated sexual partner is not only against the acceptable social norms and values, but also against the acceptable human behaviours.
5. Parents are the trusted and dependable persons that children normally have 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.
6. 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.
7. 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.
8. The victim was fourteen 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.

9. You have committed this disgraceful sexual exploitation on the complainant when she was not in a position to react. You found that she was sleeping, when you came to the room to sleep. At that point you found an opportunity to satisfy your disgraceful sexual gratification. You then removed her shorts and undergarment, and penetrate her vagina with your tongue. When the mother of the complainant woke up and switched on the torch, you pretended that you were sleeping. I accordingly find the degree of culpability in this offending is substantially high.
10. In view of the seriousness of this crime, and the level of harm and culpability, I select eleven (11) years as the starting point.
11. You have blatantly breached the trust reposed in you by the complainant as her father. By committing this crime on the complainant, you denied the natural growth of her life. Being the biological father of the complainant, it was your duty and responsibility to provide the complainant 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 complainant was about 20 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 six 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 two (2) years to reach interim imprisonment of thirteen (13) years. I reduce one (1) year for your previous unblemished character. Your final sentence has now reached to twelve (12) years of imprisonment.

15. Having considered your age and opportunities for rehabilitation, I find ten (10) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

16. Accordingly, I sentence you for a **period of twelve (12) years imprisonment** for the offence of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act. I further order that you are **not eligible for any parole for a period of ten (10) years.**

Actual Period of Sentence

17. You have been in remand custody for this case for a period of five (5) months and ten (10) 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 six (6) months as a period of imprisonment that have already been served by you.

18. Accordingly your actual sentencing period is **eleven (11) years and six (6) months** of imprisonment period, with **nine (9) year and six (6) months** of non-parole period.

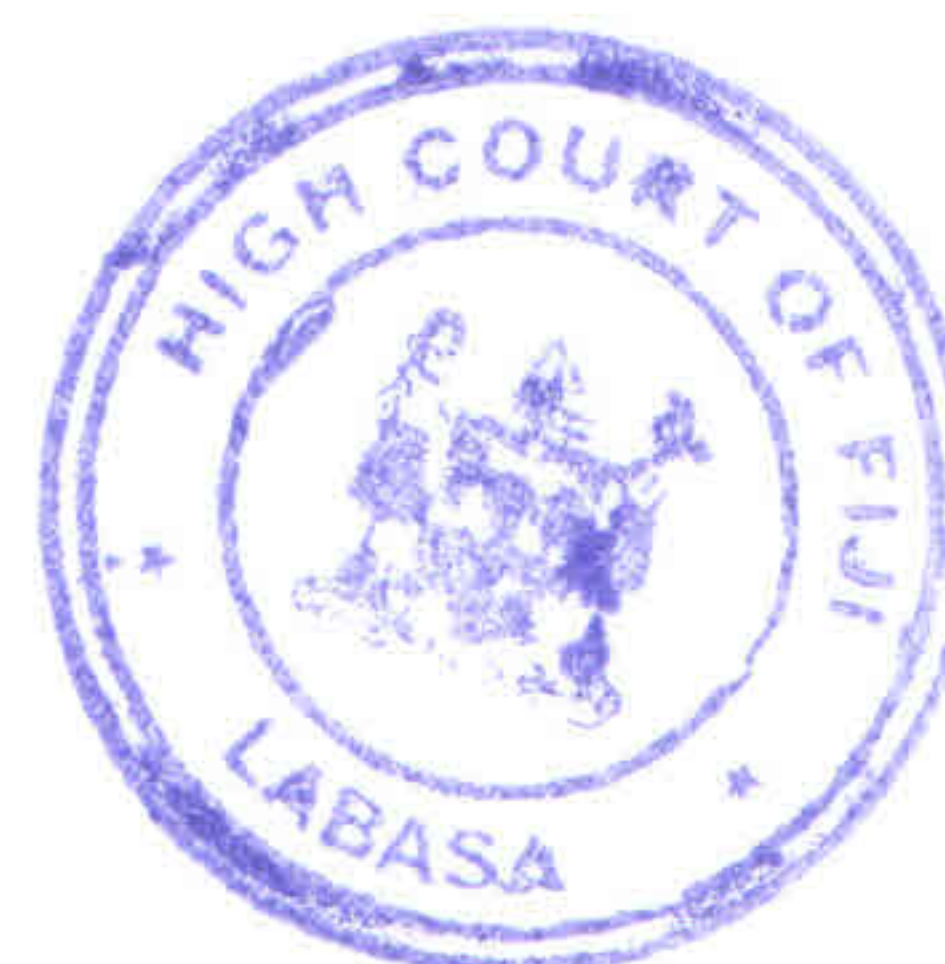
19. Since this incident involves with domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent domestic violence restraining order against the accused with standard non-molestation conditions and no 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.

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



R. T. Rajasinghe

Judge



At Labasa

13 October 2017

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