

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 271 OF 2016S

STATE

Vs

SAINIANA MARAMA DROSE

Counsels : Ms. S. Tivao and Ms. S. Lodhia for State
Ms. N. Mishra and Mr. S. Ali for Accused
Hearings : 8 and 9 November, 2017
Summing Up : 10 November, 2017
Judgement : 13 November, 2017
Sentence : 14 November, 2017

SENTENCE

1. In a Judgment delivered yesterday, the court found you guilty and convicted you on the following counts in the following information:

First Count

Representative Count

Statement of Offence

RAPE: *Contrary to Section 207 (1) and (2) of the Crime Act of 2009*

Particulars of Offence

SAINIANA MARAMA DROSE between 1st day of January 2016 and 5th day of July 2016, at Nasinu in the Central Division, penetrated the vagina of **M. L. D.** with her tongue without her consent.

Second Count
Representative Count
Statement of Offence

SEXUAL ASSAULT: *Contrary to section 210 (1) (a) and 3 (b) of the Crimes Act of 2009.*

Particulars of Offence

SAINIANA MARAMA DROSE *between the 1st day of January 2016 and 5th day of July 2016, at Nasinu in the Central Division, unlawfully and indecently assaulted M. L. D.*

2. The brief facts of the case were as follows: The accused (DW1) is 45 years old. She is a single mother, and had three sons and a daughter. Her sons were aged 24, 21 and 8. Her daughter was 14 years old and is the complainant (PW1) in this case. At the time of the alleged offendings, the accused and her children were living at Wainibuku Hart as a family. PW1 is now a form 3 student at a school in Suva. At the time of the alleged offences, she was schooling at a primary school in Wainibuku.
3. According to the prosecution, when the accused and the complainant were at home alone, the accused used to force PW1 to take off her clothes. Thereafter, she used to tell PW1 to lie down. Then she fondled her breasts. According to the prosecution, PW1 was often lying down naked, and the accused used to forcefully part her legs, and licked her "mimi", the term PW1 used to describe her vagina. According to the prosecution, when the accused was licking PW1's vagina, her tongue often penetrated her vagina for about 2 minutes.
4. The above incidents occurred when the other siblings were not at home. Between 1 January and 5 July 2016, the accused penetrated PW1's vagina with her tongue about 20 times, and fondled her breasts also for about 20 times. The accused also poked PW1's vagina about 3 times.
5. The rape of children is always a serious matter, and Parliament had prescribed a maximum sentence of life imprisonment for the same: see section 207 (1) of the Crime Act 2009. The Supreme Court of Fiji had set the

tariff of 10 to 16 years imprisonment for the rape of children: see **Anand Abhay Raj v The State**, Criminal Appeal No. CAV 0003 of 2014. Of course, the final Sentence will depend on the aggravating and mitigating factors.

6. In this case, the aggravating factors, were as follows:

(i) **Serious Breach of Parental Trust.** The female complainant was 14 years old at the time of the offences. You were her biological mother, single at the time, and with three other sons aged 24, 21 and 8 years. You were aged 45 years old at the time. Mothers are supposed to look after and care for their daughters. They are supposed to counsel their daughters to become good citizens of tomorrow. Daughters look to their mothers as role models. They look to their mothers for security, comfort and guidance. However, in your case, you did the unthinkable. You tread where even angels fear to tread. You sexually abused your 14 year old daughter by penetrating her vagina with your tongue and fondling her breasts about 20 times between 1 January and 5 July 2016. This was a serious breach of motherly trust. You abused the trust your daughter placed on you. Your case is the first of its kind to come before the courts in Fiji. You should not complain when your liberty is taken away to atone for your crimes.

(ii) **Rape of a child.** The court had said in the past and will say again that it will not tolerate the abuse of children, the future of this country. It will keep on passing long prison sentences, as warning to would-be child rapists.

(iii) By offending against the complainant, you had no regards to her right as a child, no regards to her right as a human being and no regards to her right to live a peaceful and happy life.

7. The mitigating factors, were as follows:

(i) You are a first offender,

- (ii) You had been remanded in custody, while awaiting trial, for 1 year 4 months.
8. On count no. 1 (rape), I start with a sentences of 12 years imprisonment. For the aggravating factors, I add 4 years making a total of 16 years imprisonment. For time already served, while remanded in custody, I deduct 1 year 4 months, leaving a balance of 14 years 8 months. For being a first offender, I deduct another 1 year 8 months, leaving a balance of 13 years imprisonment. On count no. 1, I sentence you to 13 years imprisonment.
9. On count no. 2 (sexual assault), I sentence you to 4 years imprisonment.
10. The summary of your sentences, are as follows:
- | | | | | | |
|------|-------------|---|----------------|---|-----------------------|
| (i) | Count no. 1 | : | Rape | : | 13 years imprisonment |
| (ii) | Count no. 2 | : | Sexual Assault | : | 4 years imprisonment |
11. Because of the totality principle of sentencing, I direct that the above sentences be made concurrent to each other, that is, a final sentence of 13 years imprisonment.
12. Ms Sainiana Marama Drose, for raping and sexually assaulting the 14 year old complainant between 1 January and 5 July 2016, at Nasinu in the Central Division, I sentence you to 13 years imprisonment, with a non-parole period of 12 years imprisonment, effective forthwith.
13. Pursuant to Section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence were designed to punish you in a manner which was just in all the circumstances, to protect the community from people like you, to deter other would-be child rapist and to signify that the court and the community denounce the rape of children.
14. The name of the complainant is permanently suppressed to protect her privacy.

15. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for State

: Office of the Director of Public Prosecution, Suva.

Solicitor for Accused

: Legal Aid Commission, Suva