

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 425 of 2016

[CRIMINAL JURISDICTION]

STATE

V

MOHAMMED ZUBAIR

Counsel : Ms. S. Serukai for State
Mr. J. Reddy for Accused

Hearing on : 20th - 22nd November 2017

Summing up on : 23rd November 2017

Judgment on : 23rd November 2017

Sentence on : 24th November 2017

(The name of the complainant is suppressed. The complainant will be referred to as "KKL".)

SENTENCE

1. Mohammed Zubair, you stand convicted of the following offences;

FIRST COUNT

Statement of Offence

RAPE: contrary to section 207(1) and 2(a) of the Crimes Act 2009.

Particulars of Offence

MOHAMMED ZUBAIR on the 13th day of February 2016 in Waila, Nausori, in the Central Division had carnal knowledge of KKL without her consent.

THIRD COUNT

Statement of Offence

INDECENT ASSAULT: contrary to section 212 of the Crimes Act of 2009.

Particulars of Offence

MOHAMMED ZUBAIR on the 30th day of April 2016 at Waila, Nausori in the Central Division unlawfully and indecently assaulted KKL.


2. At the time of offence the victim was 14 years old and you were 28 years old. The victim was your neighbour. You admitted in your evidence that you have built a good relationship with the victim and her mother. The victim considers you as a brother and she calls you 'Bhaiya'. You are married with two children. On 14/02/16 you raped the victim at her house while her mother was assisting in the preparations of your sister's engagement at your house. On 30/04/16, you indecently assaulted the victim by pulling her tights down inside a bathroom at your place.
3. Pursuant to section 207(1) of the Crimes Act 2009 ("Crimes Act") read with section 3(4) of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), the maximum punishment for rape is life imprisonment. It is settled that the sentencing tariff for rape of a child victim is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12).
4. The offence of indecent assault carries a maximum penalty of 5 years imprisonment in terms of section 212(1) of the Crimes Act. The applicable tariff is 12 months to 4 years imprisonment. (*Ratu Penioni Rokota v State* [2002] FJHC 168; HAA0068J.2002S)
5. I consider the following as aggravating factors relevant to both counts;
 - a) There is a breach of trust;
 - b) The age gap between you and the victim which is 14years; and
 - c) You exploited the victim's vulnerability.

6. In mitigation, your counsel submitted that you are 29 years old; married with 2 children who are 6 years and 7 months old; you are a first offender and you are remorseful because this court found you guilty.
7. Your personal circumstances cannot be considered as mitigating factors to reduce your sentence. Your counsel's statement that you are remorseful because this court has found you guilty in fact reflects that you are not remorseful for your actions. Therefore, the only mitigating factor is the fact that you are a first offender.
8. I select 10 years imprisonment as the starting point of your sentence for the first count. Considering the above aggravating factors I would add 4 years to your sentence and would deduct 2 years in view of the fact that you are a first offender. Accordingly your sentence for the first count is an imprisonment term of 12 years.
9. For the third count of indecent assault, I select 12 months as the starting point. Considering the aggravating factors and the mitigating factor, I sentence you to a term of 18 months for the third count.
10. The two sentences are to be served concurrently. Accordingly, your final sentence is a term of 12 years imprisonment. I order that you are not eligible to be released on parole until you serve 10 years of your sentence in terms of section 18(1) of the Sentencing and Penalties Act.
11. According to your counsel you have spent 3 days in police custody. Considering the duration you have spent in custody and the fact that I have reduced 2 years of your sentence in view of the fact that you are a first offender I consider it justified not to order the 3 days you spent in custody to be regarded as a period of imprisonment already served by you in terms of the provisions of section 24 of the Sentencing and the Penalties Act.

12. In the result, you are sentenced to an imprisonment term of 12 years with a non-parole period of 10 years.

13. 30 days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors for the State
Solicitor for the Accused

: Office of the Director of Public Prosecutions, Suva.
: Jiten Reddy Lawyers, Nakasi.