

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 075 OF 2017LAB

STATE

VS

MATAITOGA ROGOIVOSA

Counsels : Ms. A. Vavadakua for State
Ms. R. Boseiwaqa and Ms. K. Marama for Accused

Hearing : 20 November, 2018

Sentencing : 21 November, 2018

SENTENCE

1. Yesterday, in the presence of your counsels, you pleaded guilty to the following counts in the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

MATAITOGA ROGOIVOSA, on 01 November 2017, at Yacata Island in the Northern Division, unlawfully and indecently assaulted **A.B.** by licking her vagina.

SECOND COUNT

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act of 2009.

Particulars of Offence

MATAITOGA ROGOIVOSA, on 01 November 2017, at Yacata Island in the Northern Division, with his finger, penetrated the vagina of **A.B.**, a child under the age of 13 years.

2. In fact, your guilty plea came just before the trial was to start. Your trial had been set from 20 to 23 November 2018. The information was read and explained to you in the "i-taukei" and English languages. You said you understood the same. You then pleaded guilty to both counts. Your counsels were present. You told the court that no-one forced or pressured you to plead guilty. You said you pleaded guilty to the counts voluntarily and out of your own free will.
3. The prosecution presented their summary of facts in court. The same were as follows:
 - A. **The Accused in this matter, MATAITOGA ROGOIVOSA. He is charged with two counts – Sexual Assault and digital rape. The victim is A.B., hereinafter referred to as "the child". The child was born on the 24th of September 2011 and therefore under the age of 13 years.**
 - B. **The Accused is the brother of the child's mother's father and therefore a constant visitor to child's home as they were very closely related.**
 - C. **The Accused lived in the same village as the child.**
 - D. **On the 1st day of November 2017, the child, A.B., who was 6 years old at that time, returned home from Kindergarten school. On that same day, when the child reached her home in Yacata, the Accused also arrived at her home. No one except the child was at home when the Accused went to the child's home that afternoon – 1st November 2017.**

E. The Accused then told the child to remove her pants and her undergarments. The child followed what the Accused told her and removed her pants and her undergarments.

F. After the child removed her pants and her undergarments, the Accused proceeded to do the following to her:

G. **SEXUAL ASSAULT**

The Accused, Mataitoga Rogoivosa, then used his tongue to lick the vagina of the child, A.B., who was at that time, under the age of 13 years.

RAPE

Thereafter, the Accused, Mataitoga Rogoivosa, penetrated his finger into the vagina of the child, A.B., who was at that time a child under the age of 13 years.

H. The Accused had done the above to child in her home when the rest of her family members were not around.

I. The Accused made admissions in his caution interview as per attached [not provided].

4. The court then checked with your counsel, on your behalf, on whether or not you admitted the above summary of facts. Your counsel told the court that you admitted the prosecution's summary of facts. Your counsel also said that you admitted the particulars of the offences in count 1 and 2 in the information. As a result of the above, the court found you guilty as charged on both counts in the information, and convicted you accordingly on those counts.

5. The prosecution said, you were a first offender at the age of 54 years old. Your antecedent report was considered. You were married with four children, aged between 40 and 23 years old. You resided at Yacata Village and was a subsistence farmer. The victim's impact report was considered. You did not challenge the above reports. Your counsel then submitted a well prepared written plea in mitigation. The same also contained your sentence submission. The prosecution also submitted their written sentence submission. I have carefully considered the papers submitted by you and the prosecution, and I have listened very carefully to you two's verbal submissions.

6. We will discuss the "rape" offence (count no. 2) first, as it is the more serious of the two offences. Of the sexual offences, "rape" is at the top of the criminal calendar. It is the unwarranted invasion of person's body and dignity. It is the worst form of sexual assault. It

invades the privacy of a person and unwanted intrusion into a person's dignity. Society views it seriously, and through their representative in Parliament, had prescribed the maximum penalty of life imprisonment (section 207 (1) of the Crimes Act 2009). This crime, in the past, had only been prevalent amongst adults, that is, those over 18 years old. However, a disturbing trend had been witnessed in the courts. More and more, we have seen that the victims of this crime are increasingly the children of this country.

7. So much so that in Gordon Aitcheson v The State, Criminal Petition CAV 012 of 2018, the Supreme Court of Fiji, on 2 November 2018, the President of the Supreme Court of Fiji, His Lordship the Hon Chief Justice Mr. Anthony Gates, said as follows:

“[23] The increases are obvious. Even this court now has many more of such cases coming before it. This sittings is also remarkable for the number of such cases listed for consideration.

[24] The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

[25] The tariff previously set in Raj v The State [2014] FJSC12 CAV0003.2014 (20th August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.

[26] It is entirely possible that the sentencing judge when confronted with a particularly heinous rape as in State v Isoa Rainima Crim. Case HAC 064 of 2017S 25th October 2018 may exceed the tariff when assessing all of the factors. That was a case committed against an adult victim. The total sentence came to 23 years imprisonment with a non-parole period of 20 years.”

8. "Sexual Assault", contrary to section 210 (1) (a) of the Crimes Act 2009 carries a maximum sentence of 10 years imprisonment.
9. The aggravating factors in this case were as follows:
 - (i) Breach of Trust. You are related to the child victim and you are her grandfather. As such, your role was to look after and care for her. In a village setting, that was expected of you. However, you abused the trust she had in you. Instead of looking after her, you committed the offences against her. This was done when no-one was around. You forced her to take her clothes off and committed the offences against her. She was 6 years old at the time.
 - (ii) Rape of a child. We have said before and we will say again that we, the courts, will keep on passing heavy prison sentence against child rapists, as a warning to others.
 - (iii) By offending against the child, you had shown no regards to her right as a child, her right as a human being and her right not to be harmed. You also had caused heartache and sadness to her family.
10. The mitigating factors were as follows:
 - (i) At the age of 55 years, this was your first offence;
 - (ii) You had been remanded in custody, awaiting trial, for approximately 1 year 3 days from 17 November 2017;
 - (iii) Although you pleaded guilty to the charges approximately 1 year after first call in the High Court, you nevertheless saved some court time;
 - (iv) You co-operated with the police during the interview process, by admitting the offence.
11. I will start with the rape offence, as it is the more serious of the two. On count no. 2, I start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors, making a total of 16 years imprisonment. For time already served while remanded in custody, I deduct 1 year 1 week, leaving a balance of 14 years 51 weeks. For your late guilty plea and for co-operating with police during the interview, I deduct 51 weeks, leaving a balance of 14 years imprisonment. For being a first offender at the age of 55 years, I deduct 2 years, leaving a balance of 12 years imprisonment. On count no. 2 (rape), I sentence you to 12 years imprisonment.

12. On the sexual assault charge (count no. 1), I sentence you to 5 years imprisonment.
13. The summary of your sentences are as follows:
- (i) Count no. 1 : Sexual Assault - 5 years imprisonment.
 - (ii) Count no. 2 : Rape - 12 years imprisonment.
14. Because of the totality principle of sentencing, I direct that the above sentences be made concurrent to each other, making a final total sentence of 12 years imprisonment.
15. Mr. Mataitoga Rogoivosa, for sexually offending against the child complainant on 1 November 2017 at Yacata Island in the Northern Division, I sentence you to 12 years imprisonment, with a non-parole period of 11 years imprisonment, effective forthwith.
16. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the purpose of the above sentence is to punish you in a manner that is just in all the circumstances; to protect the community from people like you; to deter other people like you and to signify that the court and the community denounce what you did to the child complainant on 1 November 2017.
17. The child complainant's name is permanently suppressed to protect her privacy.
18. Pursuant to section 26 of the Domestic Violence Act 2009, I make a permanent Domestic Violence Restraining Order against the Accused to ensure the safety and well-being of the complainant.
19. 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, Labasa
Solicitor for Accused : Office of Legal Aid Commission, Labasa