

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 51 OF 2016

STATE

-v-

IFEREIMI KUBUKAWA

Counsel : Ms. S. Kiran with Ms. S. Naibe for State  
Ms. K. Vulimainadave for Accused

Date of Judgment : 27<sup>th</sup> November, 2018

Date of Sentence : 4<sup>th</sup> December, 2018

(Name of the victim is suppressed. She is referred to as MM)

SENTENCE

1. Mr. Ifereimi Kubukawa, you were charged with one count of Rape on following information.

Representative Count

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree 44 of 2009.

*Particulars of Offence*

**IFEREIMI KUBUKAWA** between the 1<sup>st</sup> day of October, 2015 and the 31<sup>st</sup> day of December, 2015 at Nadi in the Western Division penetrated the vagina of **MM**, with his finger.

2. The assessors unanimously found you guilty of Rape as charged. The Court accepted the opinion of assessors and found you guilty of Rape. You were convicted accordingly.
3. You now come before this Court for sentence.
4. The facts proved in trial are that you are the biological father of the victim. The victim was 6 months old when you raped her. Victim's mother used to go to the river to wash cloths leaving the victim with you. Upon her return, victim's mother noticed a discharge of pus from victim's vagina on several occasions. The victim was 3 months old at that time. When the victim was 5 months old her mother had noted pus with blood coming out from victim's vagina.
5. After a heated argument, you chased victim's mother away from home, forcing her and victim to seek refuge in a friend's house. While victim's mother went to the river, you came back and took the victim away from home. When you returned the baby home, victim's mother observed blood in victim's napkin. After a medical examination at the clinic, victim's mother was advised to go to the police station. Whilst at the Nadi Police station, a Social Welfare Officer came and took the baby to Lautoka Hospital where the doctor found that victim had been sexually abused. Victim's mother lodged a complaint at the Nadi Police Station. You were arrested and interviewed under caution. You admitted inserting your finger into victim's vagina on several occasions while washing the victim.

6. The maximum penalty for Rape is life imprisonment.
7. The tariff for juvenile rape is now 11-20 years' imprisonment. In *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018) Gates CJ held:

*“The tariff previously set in *Raj v The State* [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> 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”*
8. In sentencing offenders, the Courts must have regard to the Constitution of Republic of Fiji and the proportionality principle enshrined in it. Section 4 of the Sentencing and Penalties Act 2009 requires the courts to have regard to the maximum penalty prescribed for the offence, current sentencing practice and applicable guidelines issued by the courts in passing a sentence.
9. The courts of the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is one of the most serious forms of sexual violence and that rapists will be dealt with severely. The courts have underscored that children are vulnerable members of our society. They are entitled to live their lives free from any form of physical or emotional abuse. They are entitled to trust their family member to protect them and keep them safe from sexual violence. When family members sexually abuse children, they should expect condign punishment to mark the society's outrage and denunciation against sexual abuse of children. Rape and sexual abuse of children have far-reaching consequences for not only the child victims themselves but also their families and society. The courts have emphasized that the increasing prevalence of such offending in the community calls for deterrent sentences.
10. By prescribing life imprisonment for Rape, the law makers expect the courts to impose harsher punishment on rape offenders. The sentence must send a clear

warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.

11. The main purposes of your sentence are deterrence and denunciation. Lord Denning once said: *“the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of the citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformatory or preventive or nothing else ... The ultimate justification of any punishment is not that it is deterrent, but that it is the emphatic denunciation by the community of crime....”*
  
12. In selecting the starting point of the sentence, the courts are required to consider the seriousness of the offending and the impact or harm caused to the victim. Your offending is very serious. The victim suffered physically and emotionally. Having considered the seriousness of the offence and the harm caused to the baby victim, I pick 12 years’ imprisonment as the starting point.
  
13. **Aggravating Circumstances**

Following aggravating circumstances have been considered to increase your sentence:

**(a) The victim was extremely vulnerable**

The victim was a child and was just 6 months old when you raped her. She was vulnerable by reason of her age. The baby victim was helpless and not able to complain or figure out what was happening to her.

**(b) Breach of trust**

The victim is your own daughter. You were in a position of trust and you had a duty to protect and ensure her safety. Victim’s mother trusted you as victim’s biological father when she left the victim in your care and custody. You have miserably failed to honour that trust.

**(c) The impact of the crime on the victim**

The impact of the crime on the victim was extremely traumatic. The acts committed by you had caused the child victim pain and injury. She became very weak and was bleeding from her vagina. She started crying in pain whenever she was urinating.

**(f) You exposed the innocent mind of a child to sexual activity at such a tender age.**

**(g) The victim lost her virginity**

You took away victim's virginity. The doctor found that victim's hymen was not present.

**(h) The disparity in the age**

You were 29 years old and your daughter was only six months old when you committed this offence. There was an age difference of approximately 28 years between you and the victim.

**(i) You completely disregarded clearly defined societal, cultural and religious norms that prohibit sexual relationships with family members.**

14. **Mitigating Circumstances**

I considered the mitigating circumstances your Counsel has submitted to this court. The mitigating factors submitted are of very little mitigating value.

- (a). You are 30 year old young farmer. You are married and now separated. You are the sole breadwinner of your family looking after your elderly mother.
- (b). You are a first offender. You do not have any previous convictions.

15. **Time Spent in Remand**

You were in remand for two months. I have separately considered the remand period and have given a discount of two months.

16. **Sentence**

I add 3 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 15 years' imprisonment. I deduct 1 year for mitigating factors and for the remand period of two months bringing the sentence down to 14 years' imprisonment.

17. You are a first and young offender. Acting under Section 18(1) of the Sentencing and Penalties Act, I order that you are eligible for parole after serving an imprisonment term of 12 years.

18. **Summary**

**You are sentenced to 14 years imprisonment with a non-parole period of 12 years.**

19. 30 days to appeal to the Fiji Court of Appeal.



**Aruna Aluthge**

**Judge**

**At Lautoka**

**4<sup>th</sup> December, 2018**

**Counsel:**

- **Office of the Director of Public Prosecution for State**
- **Legal Aid Commission for Defence**