

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 96 of 2015

STATE

V

BIU CABEBULA

Counsel : Ms. S. Naibe for the State.
: Mr. S. Kumar [LAC] for the Accused.

Dates of Hearing : 2, 8, 9 March, 2018
Closing Speeches : 12 March, 2018
Date of Summing Up : 13 March, 2018
Date of Judgment : 15 March, 2018
Date of Sentence : 20 March, 2018

SENTENCE

(The name of the victim is suppressed, she will be referred to as "AB")

1. In a judgment delivered on 15 March, 2018 this court found the accused guilty and convicted him for one representative count of rape and one count of indecent assault as per the following information:

FIRST COUNT

REPRESENTATIVE COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) & (2) (a) of the Crimes Act No. 44 of 2009.

Particulars of Offence

BIU CABEBULA between the 9th of July, 2012 to the 31st of July, 2012 at Sigatoka in the Western Division, penetrated the vagina of “**AB**” with his penis without her consent.

SECOND COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to section 212 (1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

BIU CABEBULA on the 6th day of July, 2012 at Sigatoka in the Western Division, unlawfully and indecently assaulted “**AB**” by caressing her breast.

The brief facts were as follows:

2. The victim in the year 2012 was 15 years of age and a Form 4 student of Sigatoka Village. In the same year the accused also moved to the same Village with his father who was a Pastor.
3. On 6 July, 2012 at about 7.30pm the victim and her youngest sister went to attend a church service at the accused’s house. After the church service finished and as the victim and her youngest sister were about to leave for home, the accused came and offered to drop them.
4. The victim refused the offer but the accused insisted, whilst walking the accused told the victim that he wanted to have sex with her but the victim refused. Upon reaching home, the accused told the victim’s sister to go and watch movies at her uncle’s house. The victim also wanted to go with her sister but the accused stopped her by forcefully pulling her arm.

5. The victim repeatedly told the accused that she could not have sex with him. After the accused let go of her hand she entered her house through the front door. After locking the door she went out through the back door to bring her sisters home. When they were returning home the victim saw the accused standing outside their kitchen. The victim was shocked to see the accused she then told her sisters to go inside the house. The accused came and pulled her hand and took her inside the kitchen which was detached from the main house.
6. In the kitchen the accused forced the victim to sit on the floor and started touching her breast over her clothes. The victim managed to escape from the accused but before she left the accused warned her not to tell anyone about what had happened.
7. When the accused was touching her breast the victim was afraid because this was the first time someone had done this to her.
8. On 9 July, 2012 the accused went to the house of the victim, she was at her home with her sisters and a cousin Ana. After the grog session finished, the victim went to sleep, whilst asleep she felt someone tapping her leg and also pulling it. When she woke up she saw the accused standing beside the bed in the bedroom. She was shocked to see the accused in her bedroom.
9. The victim told the accused to go into the living room so as not to disturb her mother who was sleeping with the victim in the same bedroom. In the living room she asked the accused how he was able to get inside the house.

10. The accused pulled her hand and laid her on the bed, took off her pants and also his pants he then inserted his penis inside her vagina and had sexual intercourse for three (3) minutes.
11. When the accused was on top of her having sex, she felt pain all over her body especially her thighs. The victim did not consent to what the accused had done to her. After having sex the accused stood up got dressed and before going away he told the victim not to tell anyone about what had happened. After the accused left, the victim went to the bathroom and she saw blood coming out from her vagina.
12. The victim also informed the court about another incident in the same month that is July. At about 9pm whilst the victim was sleeping in the bedroom with her sisters she felt someone tapping her leg. When she woke up she was shocked to see the accused standing beside her bed.
13. The accused pulled her hand and took her to the last bedroom and inside the room he forcefully took off her clothes and inserted his penis into her vagina and had sexual intercourse for 10 minutes. The victim was scared and tried to get away from the accused because this was not the first time he had done this to her.
14. The victim wanted to shout but the accused had blocked her mouth with his hand and also told her not to shout. She tried to push and kick him away but could not since he had held her tightly and continued to have sex with her.
15. The victim felt weak all over and couldn't do anything, her sisters were sleeping inside their bedroom and her mother was not at home. Before leaving, the accused told the victim not to tell anyone about what had happened.

16. On 27 February, 2013 the victim went to the Lautoka Hospital with her aunt since she was sick, on this day she came to know that she was 7 months pregnant. A Doctor from the hospital reported the matter to the police. At the Police Station the victim told the police officers everything the accused had done to her.
17. Both counsel have filed helpful written sentence submissions for which the court is grateful.
18. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
 - a) The accused is a first offender;
 - b) He was 31 years of age at the time of the offending;
 - c) The accused is married with 2 children ages 1 and 3 respectively, furthermore his wife is currently 3 months pregnant;
 - d) He is a Director of a carpentry business and earns \$500 per fortnight;
 - e) He is also a government grant scholarship student at APTC undertaking his last stage of carpentry course;
 - f) The accused cooperated with the Police during the course of investigation.
 - g) The accused seeks leniency and promises not to re-offend.
19. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj -vs.- The State, CAV 0003 of 2014* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

20. The aggravating features are:

a) Breach of Trust

The victim knew the accused and looked upon him as a brother. The accused was like a family member who would regularly visit the house of the victim. The accused grossly breached the trust of the victim and her family by his actions. The victim was innocent and vulnerable and the accused took advantage of this.

b) Education

As per the victim impact assessment filed in court the victim could not finish her education since she got pregnant as a result of what the accused had done to her. She had to stay home to look after her son.

c) Age Difference

The victim was 15 years of age whereas the accused was 31 years of age. The age difference is 16 years which is substantial.

21. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under one of the most serious category of offences. The Supreme Court of Fiji in the decision of *Anand Abhay Raj* (supra) has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment.

22. It is a well-known fact in this Country that sexual offences involving children continue to rise. In most cases the perpetrators are people who are known to the victims. It is the duty of the court to protect young children from sexual exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty.

23. There has also been an increase in sexual offences where the offenders are matured adults.
24. Mr. Cabebula as a matured adult, a fellow villager and a person who was very much trusted by the victim and her family you should have been more responsible, think of the discomfort the victim and her family had to endure as a result of your sexual lust. This court will be failing in its duty if a deterrent sentence was not imposed. You should be ashamed of yourself. You have ruined the life of a young girl who had a bright future ahead of her.
25. It is disgusting to note the manner in which you had breached the trust of this child. She became pregnant at a time when children are developing and looking forward to better times in life because of you all her dreams and aspirations had been shattered, no amount of repentance can make up for what the victim has lost.
26. Section 17 of the Sentencing and Penalties Act states:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

27. I am satisfied that the two offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing

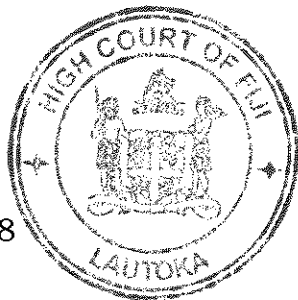
and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the two offences.


28. After assessing the objective seriousness of the offences committed I take 12 years imprisonment as the starting point of your aggregate sentence. I add 4 years for the aggravating factors, bringing an interim total of 16 years imprisonment. Since the personal circumstances and family background of the accused has little mitigatory value I find his good character has substantive mitigating value. I therefore reduce the sentence by 2 years.
29. I note from the submissions of the State that the accused was remanded for 28 days. I exercise my discretion to reduce the sentence for the remand period by one month in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served by you. The final sentence is 13 years 11 months imprisonment.
30. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the head sentence of imprisonment for the representative count of rape and indecent assault is 13 years and 11 months imprisonment.
31. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on a victim who was 15 years of age compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
32. Under section 18 (1) of the Sentencing and Penalties Act, I impose 10 years as a non-parole period to be served before the accused is eligible

for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.

33. I am satisfied that the term of 13 years and 11 months imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each offence.
34. In summary I pass an aggregate sentence of 13 years and 11 months imprisonment with a non-parole period of 10 years to be served before the accused is eligible for parole.
35. This court takes note of the fact that the accused is undertaking his final stage of carpentry course. It is recommended that the Commissioner of Correction Services facilitates by providing assistance for the accused to complete his course.
36. 30 days to appeal to the Court of Appeal.

At Lautoka
20 March, 2018




Sunil Sharma
Judge

Solicitors
Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Accused.