

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 201 of 2018

[CRIMINAL JURISDICTION]

STATE

V

TAIONE PETERO SENIKUTA

Counsel : Ms. S. Serukai for State
Ms. M. Ratidara for Accused

Hearing on : 28 January - 31 January 2019

Summing up on : 01 February 2019

Judgment on : 04 February 2019

Sentenced on : 21 February 2019

(The name of the victim is suppressed. The victim will be referred to as "CS".)

SENTENCE

1. Taione Petero Senikuta, you stand convicted of the following offence;

Statement of Offence

Rape: contrary to section 207 (1) and (2)(b) and (3) of the Crimes Act of 2009.

Particulars of Offence

TAIONE PETERO SENIKUTA, on the 29th of April, 2018 at Nadoi Village, Rewa, in the Central Division, penetrated the vulva of CS, who is a child under the age of 13 years old, with his finger.

2. You raped the victim by inserting your finger inside her vulva. You were watching television with her in a neighbouring house when you committed this crime. At the time of offence the victim was 08 years old and you were 59 years old.
3. According to the victim you first touched her right leg asking her what happened to her leg. Thereafter you moved your hand up towards her genital area and inserted your finger inside her vulva. In your evidence you said that there was a plaster on the victim's right leg and she wanted you to have a look at it. The second defence witness who was 7 years old also said that there was a boil on the victim's leg on the day in question. In the circumstances, I have concluded that this was a crime of opportunity.
4. The victim did not give evidence of any force being used by you apart from touching her and penetrating her vulva. There was no evidence that you forcefully removed the clothes that the victim was wearing. What could be gathered from the account given by the victim was that the victim was not wearing any undergarment at the material time.
5. 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. The sentencing tariff for rape of a child victim is a term of imprisonment between 11 to 20 years [*Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018)].
6. The prosecution has submitted a comprehensive report titled '*The Mental Health Consequences of Sexual Violence, Rape, and Child Rape In the Context of Child Rape in Fiji*' produced by the Human Rights in Trauma Mental Health Program, Stanford University School of Medicine. According to this report '*trauma and rape experienced during childhood or adolescence have been shown to have more pervasive and severe consequences than adult exposure due to the negative impact on the development*

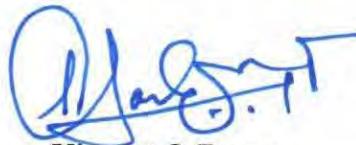
of cognitive and intellectual capacities, executive functioning, emotion regulation, and interpersonal skills'.

7. Therefore in sentencing an offender who had committed child rape, a court should regard deterrence and denunciation as the two main purposes of imposing the sentence. The term of imprisonment imposed should adequately demonstrate the denunciation of the offender's conduct by the court and the community. The term should be long enough to deter the offender from committing offences of the same or similar nature and should serve as a deterrence to other persons.
8. However, the Sentencing and Penalties Act also requires the offenders to be punished to an extent and in a manner which is just in all the circumstances. To this end, it is necessary to conduct a thorough and a fair assessment of the culpability of the offender.
9. The prosecution demands for an imprisonment term of 19 years. This is a deviation from the long standing tradition where the prosecutors were supposed to refrain from advocating for a particular sentence. As Goundar J said in the case of *State v Kumar* [2014] FJCA 86; AAU0040.2012 (2 June 2014), "[s]entencing is a matter for the courts and not for the prosecutors. The prosecutors' obligations are to assist the court by providing all the relevant information that has bearing on the sentence. It is not their function to recommend a specific punishment".
10. I consider the following as aggravating factors in this case;
 - a) There is a breach of trust to a certain extent as you were known to the victim. However, I am mindful not to give much weight to this factor;
 - b) The age gap between you and the victim which is 51 years;
 - c) You exploited the victim's vulnerability.
11. The only mitigating factor available to you is the fact that you are a first offender. You have made a detailed submission outlining the services you have rendered

to your village and in particular towards educating the youth. In determining your previous character, I will take your submission into account in line with the provisions of section 5(c) of the Sentencing and Penalties Act.

12. I select 11 years imprisonment as the starting point of your sentence. Considering the above aggravating factors I would add 05 years to your sentence and would deduct 03 years in view of your previous good character.
13. Accordingly, I would sentence you to a term of 13 years imprisonment. I order that you are not eligible to be released on parole until you serve 11 years of your sentence in terms of section 18(1) of the Sentencing and Penalties Act.
14. It is submitted that you were in custody since 07/05/2018. The period you have been in custody shall be considered as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I hold that the period to be considered as served should be 10 months.
15. In the result, you are sentenced to an imprisonment term of 13 years with a non-parole period of 11 years. In view of the time spent in custody, time remaining to be served is as follows;
Head Sentence - 12 years and 02 months
Non-parole period - 10 years and 02 months
16. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors:

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