

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 010 OF 2019**

**STATE**  
**v**  
**JONE BEBE**

**Counsel:** **Ms. S. Shameem for State**  
**Ms. T. Kean for Defence**

**Date of Judgment:** **12 November 2019**

**Date of Sentence:** **18 November 2019**

(The name of the Complainant is suppressed. She is referred to as KL)

**SENTENCE**

1. Jone Bebe, you stand convicted of the following offences after trial;

**Count 1**

*Statement of Offence*

**ASSAULT WITH INTENT TO COMMIT RAPE:** Contrary to  
section 209 of the Crimes Act, 2009.

*Particulars of Offence*

**JONE BEBE**, on the 1<sup>st</sup> day of January 2019, at Manu Village, Tailevu in the Eastern Division, assaulted **KL** with intent to commit rape.

**Count 2**

*Statement of Offence*

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

*Particulars of Offence*

**JONE BEBE**, on the 1<sup>st</sup> day of January 2019, at Manu Village, Tailevu in the Eastern Division, had carnal knowledge of **KL** without her consent.

2. The facts of the case are that the complainant was 17 years of age and a single mother of an infant at the time of the offence. On the day of the incident she was washing some kitchen utensils beside her father's house when you approached her. You pulled her from her t-shirt to the nearby bush. You closed her mouth when she tried to scream. She was scared because you were drunk. She tried to resist, but failed because you were huge. Having pulled the complainant into the bush, you punched her in her face and bit her neck. Her head became numb; she fainted and fell to the ground. She did not agree to have sex with you and pleaded that she did not want to have sex as her daughter was still small. You did not listen to her. You laid on top of the complainant, inserted your penis into her vagina and had sexual intercourse with her, without her consent.
  
3. The complainant had received a 3mm x 3mm bruise on her right temple region. There was haematoma on the neck both on right and left sides. Upon the examination of the genitalia, the doctor found a superficial laceration on the interior surface of major labia at 6 o'clock and 8 o'clock positions.

4. The maximum punishment for Assault with Intent to Commit Rape is 10 years' imprisonment and the tariff ranges from 1 to 4 years' Imprisonment [Jone Tabaka V Lautoka State Criminal Appeal Case No. 5 of 2013].
5. The maximum sentence for Rape is life imprisonment. The sentencing tariff for rape of a child victim is settled. The Supreme Court in Aitcheson v State [[2018] FJSC 29; CAV0012.2018 (2 November 2018) declared that the relevant tariff should be a term of imprisonment between 11 and 20 years. This tariff is intended to be applied to every case where the victim is below the age of 18 years. I have seriously considered however the observations made by Perera J in State v Tubunavau [2019] FJHC 950; HAC346.2018 (30 September 2019) and by Keith in light of the fact that complainant in this case was only one month short of age of majority which is 18 years at the time of offence.
6. The offences you are convicted of form a series of offences of similar character committed in the same transaction. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for the two offences you are convicted of.
7. I have selected 11 years as the starting point after considering the seriousness of the offence and the harm caused to the complainant.
8. I consider the following as aggravating factors in this case in light of the Supreme Court Judgment in Ram v State [2015] FJSC 26 923 October 2015);
  - a. You exploited the victim's vulnerability and naivety. She had come with her 6 month old child to visit her parents to celebrate the New Year and you took her to the bush without having any regard to the unattended baby.
  - b. You were drunk at the time of the offence.
  - c. You closed complainant's mouth when she was trying to shout for help.

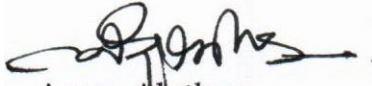
- d. You are in a domestic relationship with the complainant and you have breached the trust when you committed these offences on your own cousin.
9. The State has not filed a Victim Impact Statement. However, I am mindful of the evidence of the complainant given in Court which portrays how much she has suffered psychologically and the physical harm she has suffered other than that expected to see of a victim in a normal rape case. In view of my decision to impose an aggregate sentence, I particularly take into consideration the violence perpetrated on the complainant in relation to the 1<sup>st</sup> count.
10. Your Counsel has submitted that you are 25 years of age, single a farmer by profession. You are supporting the elderly parents as the sole breadwinner of the family. You have no previous convictions and have maintained a good character for the past 25 years. You have cooperated with police and you seek forgiveness of this court. You have maintained the not guilty plea allowing the complainant to relive her ordeal in court. Although you have sought forgiveness from the complainant and her family in an apparent bid to prevent her from reporting the matter to police, I am unable to accept what your Counsel has said in her submission that you are genuinely remorseful of your actions.
11. Considering the aggravating factors mentioned above, I would add 03 years to your sentence and would deduct 02 years in view of the mitigating factors mentioned above. You have spent 4 months in remand custody which period has been deducted separately from your sentence in coming to your final sentence.
12. Accordingly, I sentence you to a term of 12 years' imprisonment. This is your aggregate term of imprisonment for the two offences you are convicted of.
13. In light of the recent Supreme Court decision in Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019), in imposing a non-parole period, I have considered the circumstances of the offence and the submission of your Counsel that you are a young

and first offender who has a greater chance of rehabilitation. However, the circumstances of the offending are extremely serious and deplorable. The society expects the courts to denounce such actions and come down harsh on offenders who violate the children who are the future of our nation. The offending would warrant a long custodial sentence, *albeit* a non-parole period not too close to the head sentence, so that a right balance is struck a between your prospects of rehabilitation and other purposes of sentencing, particularly deterrence both general and special. Taking all these factors into account, I would impose a non-parole period of 8 years.

14. I sentence you to 12 years' imprisonment with a non-parole period of 8 years.

15. You have 30 days to appeal to the Court of Appeal.



  
Aruna Aluthge  
Judge

At Suva

18 November 2019

Counsel: Office of the Director of Public Prosecution for Prosecution  
Office of the Legal Aid Commission for Accused