

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC No. 64 of 2018

THE STATE

v

GABIRIELI BUARAKI

Counsel : Mrs. A. Vavadakua for the State
Miss K. Boseiwaqa with Ms. M. Tuiloma (L.A.C.)
for the Accused

Date of Plea : 2 April 2019

Date of Sentence : 3 April 2019

SENTENCE

1. The accused entered an unequivocal plea of guilty before this Court to the following two counts:

COUNT 1

Statement of Offence

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

Particulars of Offence

GABIRIELI BUARAKI, between the 1st day of July 2017 and 31st day of July 2017, at Qaranivai, Dogotuki, Northern Division, penetrated the vagina of (name suppressed), a child under the age of 13 years, with his penis.

COUNT 2

Statement of Offence

PROCURING ANOTHER TO WITNESS AN ACT OF GROSS INDECENCY: Contrary to section 210(1) (b) (ii) of the Crimes Act 2009

Particulars of Offence

GABIRIELI BUARAKI, between the 1st day of January 2018 and 31st day of January 2018 at Qaranivai, Dogotuki, Northern Division, procured (name suppressed) without her consent to witness an act of gross indecency.

2. On his agreement to a relevant set of facts the Court convicted him of both counts and now proceeds to sentence him for the two offences.

Facts

3. The victim (“the child”) was 12 years old at the time of the first offence and 13 years old at the time of the second offence. The accused is her stepfather.
4. On an unknown date in July 2017 the child was asleep after doing household tasks. She awoke to feeling a weight on top of

her. It was the accused who was lifting her skirt and removing her panty. He then penetrated her with his penis.

5. In the month of January 2018, the child had bathed herself and had gone to the room of her mother and the accused to get clean clothes to wear. The accused, her stepfather was lying on the bed. The child called out to her mother to help her dress. The accused then attracted her attention and she saw that he was aroused, exposing himself to the child. He told her to come and lie on him. The child was fearful and disgusted and tried to flee the room at which stage the mother entered and confronted the accused.
6. The accused was subsequently arrested and interviewed by the Police under caution. He fully co-operated, admitting his offending to them.

The Accused

7. The accused is 49 years old, married with 4 children of his own and 4 step children. He is a yaqona farmer earning about \$120 per week.
8. His Counsel stresses his co-operation, his early guilty plea and his remorse. This Court has noticed his remorse.
9. He has a clear record and one other matter pending before the Courts. That matter is totally unrelated and not a sexual offence, so it will not be considered to his detriment.
10. He has spent 7.5 months in remand awaiting determination of these counts.

11. Although not pleaded, one particular factor in his favour is that by pleading to these offences before trial he has saved the child who is now 15 years old from reliving this ordeal and telling strangers about it.
12. In aggravation of the offence, I take into account the gross breach of trust expected from a man married to the child's mother, a man who in the role of *pater familias* is to protect a vulnerable child from the perversions and implications of adult physical relationships.

The Law

13. The maximum penalty for the offence of rape is life imprisonment and the Supreme Court has held that rapes of children must attract a sentence of between 11 and 20 years. (**Aitcheson**CAV0012 of 2018).
14. Sexual abuse of our nation's children, all too heinously often at the hands of close relatives, is a scourge and the despair of both the public and our law enforcement agencies. It is to be hoped that news of heavy sentences being passed on these miscreants will filter through to would be offenders and the scourge will abate.
15. For this offence, I take a starting point of 12 years imprisonment, towards the lower end of the tariff band. For the aggravation of breach of trust I add another 5 years to the sentence.
16. Section 4(2) (e) of the Sentencing – Penalties Act 2009 demands that I have regard to the effect of the crime on the child. For the first time in her life she has had to move away from home and

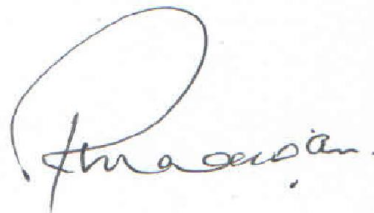
from her mother and assume residence with relatives in Suva. She is having to adapt to a new school and to a totally different environment. For these sad factors I add 2 years to the sentence. The interim total is now 19 years imprisonment. For the accused's clear record and for his remorse I deduct two years bringing the sentence down to 17 years.

17. The accused's plea of guilty has not come at the first opportunity, however he did indicate to my brother Goundar J. on the 20th August 2018 that he would be pleading guilty. In these circumstances and in recognition of the fact that he saved the child from the trauma of testifying, the Court deducts 5 years from the sentence with the result that he is sentenced to a term of imprisonment of 12 years. For his time spent in remand awaiting this sentence, I deduct 7 months. The sentence for the first Count of Rape is a term of imprisonment of 11 years and 5 months.
18. The maximum penalty for the second offence is ten years imprisonment. It is included in the Crimes Act as a sexual assault.
19. This Court set the tariff for this offence in the case of **Abdul Khaiyum** HAC 160 of 2013, as to be between 2 to 8 years imprisonment.
20. The most serious sexual assaults involve contact between skin and genitalia. This assault is the forcing a female to witness the erect penis of the perpetrator. There is no contact between the actors and there has been no physical harm occasioned to the victim. An appropriate sentence, given that the victim was a female minor, is a term of imprisonment of 4 years. I deduct one

year for the guilty plea meaning that the accused will serve a concurrent term of 3 years for the second count.

Orders

1. For the first count of rape the accused will serve a total sentence of 11 years and 5 months.
2. For the second count of procurement, the accused will serve a sentence of three years to be served concurrently with the first count.
3. The accused will serve a minimum term of ten years imprisonment before he be eligible to be considered for parole.
4. A Domestic Violence Restraining Order is made against the accused to protect the child and is to remain in force until further order from this Court.



P. K. Madigan
Judge



At Labasa
03 April 2019

