

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 75 of 2018

BETWEEN : STATE

AND : VILIAME ROKOTUINACEVA

Counsel : Ms Naibe for the State
Ms Vuli for the Accused

Date of plea : 23 August 2018

Date of Sentence : 28 May 2019

SENTENCE

1. You, Viliame Rokotuinaceva are to be sentenced upon freely and voluntarily pleading guilty to three counts of rape.

2. You committed the offences on three different victims and their names are suppressed as they are child victims. They will be referred to as PW1, PW2 and PW3 respectively in the following counts that you are indicted for;

COUNT 1

Statement of offence

Rape: Contrary to section 207(1)(2)(c) and (3) of the Crimes Act 2009

Particulars of offence

Viliame Rokotuinceva between the 1st day of August 2017 and the 31st day of August 2017 at Sigatoka in the Western Division penetrated the mouth of PW1, a child under the age of 13 years with his penis.

COUNT 2

Statement of offence

Rape: Contrary to section 207(1)(2)(c) and (3) of the Crimes Act 2009

Particulars of offence

Viliame Rokotuinceva between the 1st day of October 2017 and the 31st day of October 2017 at Sigatoka in the Western Division penetrated the mouth of PW2, a child under the age of 13 years with his penis.

COUNT 3

Statement of offence

Rape: Contrary to section 207(1)(2)(c) and (3) of the Crimes Act 2009

Particulars of offence

Viliame Rokotuinceva between the 1st day of October 2017 and the 31st day of October 2017 at Sigatoka in the Western Division penetrated the mouth of PW3, a child under the age of 13 years with his penis.

3. The court is satisfied that your plea in respect of each count is unequivocal and upon your admission of summary of facts you are now convicted for all three counts.
4. PW 1, who was 5 years old at the time of the commission of the offence is your nephew and in August 2017 during the Term 2 school holidays you were alone with PW1 at your family house. While at the corner of the sitting room you told PW1 to suck your penis. PW1 sucked your penis.
5. PW2 and PW3 are your nieces. They were 7 years old at that time. On 10 October 2017 you told them to go and pick chilies. You took them to a quiet and isolated area in the village. You took off your pants and told PW2 to suck your penis. After PW2 sucked your penis you called PW3 who was sitting beside you to suck your penis. PW3 sucked your penis while PW2 was sitting next to you. Once you ejaculated you told PW2 and PW3 to return home.
6. The three victims were questioned by their relatives a few days later and the victims told their relatives of what happened to them. The matter was reported to the police and you were arrested.
7. The State submitted that there is a clear escalation of sexual offences in Fiji in the recent years. In 2015 out of the 138 rape and sexual abuse cases reported, 87 cases were involving child victims. By 2018 the numbers of rape and sexual abuse cases have increased to 204 and in 141 cases, the victims were children.
8. In Aitcheson v State [2018] FJSC 29; CAV 0012.2018 (2 November 2018) the Supreme Court enhanced the tariff for child rape considering the obvious increase of sexual offences in the last few years. Chief Justice Gates (as he then was) observed the following;

“[24] The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to

exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

[25] The tariff previously set in Raj v The State [2014] FJSC 12 CAV0003.2014 (20th 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.”

9. The State has further submitted findings on the impacts on child victims in sexual offences. The alarming impacts of sexual offences on children, and generally on the entire society cannot be gainsaid. Particularly, the State submitted the victim impact statements of the three victims in this case which reflect immense difficulties that they are going through in their lives. According to the victim impact statements of the victims the following emotional / psychological effects and life changes are noted;

PW1 - Scared when he sees the Accused. Hide from him. Cries when children tease him about the incident.

Life changes - Sleep walking, bed wetting, wakes up in the middle of the night being scared, cannot sleep well.

PW2 - Feeling scared, bed wetting, wakes up in the middle of the night, shaking her body, gets emotional easily, gets angry and throws things at others, gets scared when she hears anyone talking loudly.

Life changes - Isolating herself, staring into the space, scared to go outside at night, hardly go to play with other children.

PW3 – At times she thinks about the incident and gets scared, feels hurt and upset sharing the incident, taking her frustration out at others by throwing things in an aggressive manner, friends from the same village teasing her at school and she feels embarrassed.

Life changes – Sleepless nights, feels “yucky” about the incident and keeps on brushing her teeth.

10. I have observed the following aggravating factors common to all three counts in this case;

- a) Vulnerability of victims due to their young ages
- b) Breach and abuse of trust as the uncle of the victims
- c) The effects of emotional and psychological trauma on the victims
- d) The offences are Domestic violence offences

11. You have committed the offences in count 2 and 3 in the presence of the other victim. It is an egregious act to abuse a child sexually in the presence of another child. I consider it as further aggravation in respect of count 2 and 3.

12. You pleaded guilty saving the court’s time. However, the courts no longer give 1/3 discount for early plea irrespective of the gravity of the case. His Lordship the Chief Justice, Gates while endorsing the approach adopted by Justice Goundar in Mataunitoga [supra] observed the following in Aitcheson V The State (supra);

“The one third discount may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably.”

13. You are a first offender. You are 20 years old. In mitigation it was submitted by the Legal Aid counsel that you have got married in November 2018. You are unemployed. It was also informed that you look after your niece. Your personal

circumstances have only a little mitigatory value. However, you will be given credit for your previous good character.

14. Since you have been granted bail at the very outset you have not spent any time period in remand.

15. Exposure to sexual offences at very young age could profoundly impact an individual's life. The increase of sexual offences in the recent times demands intervention of courts not only to punish the offenders commensurately but also to send a message of general deterrence to the society. Sexual offences committed against children in domestic context are considered much more serious as such offences reflect violation of trust and security. The sentence must necessarily reflect that such offences are condemned with abhorrence.

16. The maximum punishment for rape is life imprisonment. Having considered the objective seriousness of the offences you committed I pick a starting point of 12 years for each count. In respect of the first count, I add 4 years for the aggravating factors. For the second and third counts, I add 5 years for aggravation. For your personal circumstances, previous good character and for the early plea I decide to give you a discount of 3 years.

17. Accordingly, I impose the following sentences on you;

First Count - 13 years imprisonment

Second Count - 14 years imprisonment

Third Count - 14 years imprisonment

18. You are still at very young age. Undoubtedly the chances of rehabilitation are high, and the court has a duty to leave room for a young offender to reform.

19. I order all three sentences to run concurrently. Accordingly, you should serve a total of 14 years imprisonment. You are eligible for parole after ten years.

20. Further I issue permanent domestic violence restraining orders for non-molestation and for non-contact for the safety of the three victims.

30 days to appeal to the Court of Appeal



Rangajeeva Wimalasena
Acting Judge

Solicitors:

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused