

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 128 of 2018

[CRIMINAL JURISDICTION]

STATE

V

PIO SAKE

Counsel : Ms. S. Sharma for the State
Mr. A. Chand with Ms. L. Taukei for the Accused

Sentenced on : 19 July 2019

[The name of the victim is suppressed. Accordingly, the victim will be referred to as "KT". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said victim.]

SENTENCE

1. Pio Sake, you were initially charged with one count of indecent assault and two counts of rape. When you were arraigned on the relevant Information, you pleaded guilty to the charge of indecent assault and not guilty to the two rape charges. The trial commenced on 15/07/19.
2. The complainant in her evidence said that you only touched her genitalia and there was no penetration. She also said that you did not do anything else. Your counsel did

not cross-examine the complainant and he indicated that you are willing to plead guilty to the offence of sexual assault as an alternative offence to the second count of rape where it was alleged that you penetrated the complainant's vagina with your finger.

3. The prosecution then filed an amended Information which contained a single count of sexual assault. The charge reads thus;

Representative Count

Statement of offence

SEXUAL ASSAULT: Contrary to section 210(1) (a) of the Crimes Decree 2009.

Particulars of offence

PIO SAKE between the 1st day of January 2017 and the 31st day of December 2017 at Kadavu, in the Southern Division, unlawfully and indecently assaulted **KT** by touching the top of **KT's** vagina.

4. When you were arraigned on the amended information, you pleaded guilty to the charge and you admitted the following summary of facts;
 1. *The complainant is Kesaia Takayawa, 11 years old, residing at Nauciwai, Yale, Kadavu.*
 2. *The accused is Pio Sake, 68 years old, residing at Nauciwai, Yale, Kadavu.*
 3. *The accused is the complainant's paternal grandfather.*
 4. *The complainant resides with her parents and siblings.*
 5. *Sometimes between 1st January 2017 and 31st December 2017, the complainant's mother namely Sevura Lesimaisenai was in Suva to give birth to her youngest child. The complainant's father was also in Suva with her mother.*
 6. *Whilst the complainant's parents were away in Suva, the accused touched the complainant's pa meaning vagina with his hands. The accused inserted his hand*

inside her panty and touched the top of her vagina. The accused touched the complainant's top of vagina 3 times.

7. *The accused was arrested and caution interviewed on 21st March 2018 and he was formally charged.*

5. The offence of sexual assault under section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment. Following the case of *State v Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012), this court has been applying an imprisonment term between 2 to 8 years as the tariff for sexual assault.

6. Considering the fact that you touched the victim's naked genitalia, I take 4 years as the starting point of your sentence.

7. I consider the following as aggravating factors;
 - a) you are victim's grandfather. There was a serious breach of trust;
 - b) age difference between you and the victim is 57 years; and
 - c) you took advantage of the victims naivety and vulnerability.

8. Your previous conviction report includes only one conviction; in 1976 for the offence of 'drunk and disorderly'. Therefore, you should be regarded as a person with no previous convictions. Your counsel submits that you are ashamed and remorseful for what you did to the complainant and you have offered a traditional apology to the complainant and her parents. Thereafter you are said to have moved to Suva. It is submitted that you purposely did not apply for bail in this case because you were filled with shame and remorse.

9. I consider the following as your mitigating circumstances;
 - a) no previous convictions;
 - b) you have pleaded guilty;

- c) you are remorseful; and
- d) you cooperated with the police.

10. Considering the aforementioned aggravating factors, I add 05 years to the starting point. Now your sentence is 09 years imprisonment.
11. I deduct 04 years of your sentence considering the above mitigating factors except the guilty plea bringing your sentence to a term of 05 years imprisonment.
12. The question now is the discount I should grant you in view of your guilty plea. As stated before, you initially pleaded guilty for indecent assault where the allegation was that you touched the victim's breasts. But the victim in her evidence said you only touched her genitalia and did not do anything else.
13. You had admitted when you were interviewed under caution that you touched the victim's vagina. Victim's evidence was also that you only touched her genitalia and there was no penetration. However, you were charged with the offence of rape where it was alleged that you penetrated the victim's vagina with your finger. As I have mentioned before, based on your instructions the complainant was not cross-examined and there was an indication that you are willing to plead guilty to the offence you stand convicted now. Given these circumstances, your counsel submits that I should consider your plea as an early guilty plea and grant you a substantial discount. The prosecution on the other hand submits that you have not given an indication until after the complainant gave her evidence that you are willing to plead guilty to the lesser offence of sexual assault and therefore, the guilty plea should not earn you a substantial discount.

14. The fact that you have admitted touching the victim's genitalia in the cautioned interview and the fact that you did plead guilty to the first count in the initial information are indicative of the fact that you were willing to take responsibility for your actions. You were not charged with the alternative offence of sexual assault in relation to the second count in the Information initially filed. Given your plea of guilty to the first count in the said Information and your aforementioned admission in the cautioned interview, I consider it reasonable and justified not to regard your guilty plea to the present charge as a late guilty plea, but to consider that as one entered at an early stage. I would therefore grant you a discount of 25% in view of your guilty plea. Accordingly, a period of 01 year and 03 months will be deducted.
15. I hereby sentence you to an imprisonment term of 03 years and 09 months for the offence of sexual assault. I order that you are not eligible to be released on parole until you serve 03 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act 2009.
16. Section 24 of the Sentencing and the Penalties Act reads thus;

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."
17. It is submitted that you were arrested for this matter on 21/03/18. Accordingly, you have spent 01 year, 03 months and 28 days in custody. The period you were in custody shall be regarded as a period of imprisonment already served by you pertaining to the sentence imposed on you in this case. I hold that the period to be considered as served should be 01 year and 04 months.

18. In the result, you are sentenced to an imprisonment term of 03 years and 09 months with a non-parole period of 03 years. Considering the time spent in custody, the time remaining to be served is as follows;
- Head Sentence – 02 years, and 05 months
- Non-parole period – 01 year, and 08 months
19. Having considered the facts in this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the victim in this case, KT as the protected person. You are hereby ordered not to have any form of contact with the victim directly or by any other means, unless otherwise directed by this Court.
20. Thirty (30) days to appeal to the Court of Appeal.




Vincent S. Perera
JUDGE

Solicitors;

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