

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

High Court Criminal Case No. HAC 119 of 2016

BETWEEN : STATE

AND : JONE VAKACEGU

Counsel : Mr Seruvatu for the State
Ms Volau for the Accused

Dates of Hearing : 09 & 11 July 2019

Closing Speeches : 12 July 2019

Date of Summing up: 12 July 2019

Judgment : 15 July 2019

Sentence : 20 September 2019

(The complainant's name is suppressed)

SENTENCE

1. You, Jone Vakacegu stand convicted for one count of indecent assault contrary to section 212(1) of the Crimes Act and two counts of rape contrary to Section 207(1) and (2)(b) and (3) of the Crimes Act.

2. The complainant was 10 years at the time the offences were committed. You were 83 years old. There was no domestic relationship between you and the complainant. Initially you were charged for two counts of indecent assault and two counts of rape. However, after a full hearing you were convicted for the first, second and fourth counts and were acquitted for the third count.
3. The brief facts in respect of each count are as follows;

First Count - Indecent Assault

On 16 May 2016 you called the complainant to your house to show her something. You were without your clothes and you touched her vagina under her clothes.

Second Count - Rape

On 17 May 2016 when the complainant was returning from school you called her and showed her a \$5 note. You inserted your fingers into her vagina. You gave her money and told her not to tell anyone about the incident.

Fourth Count - Rape

On 03 June 2016 when the complainant was on her way to the school you called her to give something. She followed you to your house. After taking her inside the house you removed her uniform and her undergarments. You were also naked, and you inserted your fingers into her vagina. You also lied naked on top of her. A police officer who was on duty near the school observed the complainant walking towards your house without going to the school. He came to your house to check and observed that you were lying naked on top of the complainant. Later the matter was reported to the Police.

4. There is an age gap of 73 years between the complainant and you. You took advantage of the vulnerability of a child and exposed the mind of a child to sexual activities. You incited her to fall prey to your pervert actions by giving money. The victim impact statement reflects that the complainant is

emotionally disturbed as a result of these incidents. I consider those as the aggravating factors in this case.

5. The Legal Aid Counsel tendered submissions in mitigation. Accordingly the following factors were submitted;
 - a) You are 86 years old.
 - b) Your wife has passed away and you have one child.
 - c) You earn your living as a security guard.
 - d) You suffer from knee and back pain. (However, no medical reports were tendered to confirm your illnesses).
 - e) Your previous good character.
6. It should be noted that the personal circumstances and family background carry only a little mitigatory value in cases of sexual nature.
7. The maximum punishment for indecent assault is 5 years and the tariff is 12 months to 4 years.
8. The maximum punishment for rape is life imprisonment. The tariff for child rape is now 11 years to 20 years. It was observed in *Aitcheson v State* [2018] FJSC 29; CAV 0012.2018 (2 November 2018);

“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 three counts that you are convicted for in this case, form a series of offences of the same or similar character. Section 17 of the Sentencing and Penalties Act

provides for the court to impose aggregate sentences on offenders in such instances as follows;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

10. I am satisfied that the offences that you committed are founded on the same facts and are of similar character. Therefore, I decide to impose an aggregate sentence on you.

11. Having considered the objective seriousness of the offences I pick a starting point of 13 years. For the aggravating factors I add 4 years. For your personal circumstances and for good character I deduct 1 year.

12. Now your final aggregate sentence is 16 years imprisonment.

13. You had been in remand custody for this case nearly for 5 months. As per section 24 of the Sentencing and Penalties Act any period of time spent in custody is regarded as a period of imprisonment already served by the offender. Therefore, I deduct five months from your aggregate sentence to reflect the time that you were in custody.

14. In the recent decision of the Supreme Court, in *Nacani Timo V State Criminal Petition No: CAV 0022 of 2018* it was decided that;

“It is not mandatory for a Court to award a non-parole period to every convict. However, a decision to award or decline to award a non-parole period must be taken by a court after hearing a convict and the decision must be accompanied by reasons, with an economy of words, as a part

of a just, fair and reasonable procedure keeping the interests of the convict and society(including the victim) in mind” .

15. In view of the said sentencing guidelines, the parties were requested to make submission on fixing a non-prole period. It is regrettably noted that no submissions were made by the defence or by the prosecution as per the request made by this Court.

16. Nevertheless, I have considered the age of the Accused and the prospects of rehabilitation. In light of the length of the aggregate sentence imposed on the Accused and his old age I am of the view that setting a non-parole period will not significantly promote rehabilitation or achieve any other purpose of sentencing.

17. As such I decline to set a non-parole period in this case.

18. In State vs. Cati [2016] FJHC 705; HAC 224 of 2015 (5 August 2016), Justice Vincent Perera observed the following while sentencing a 74 year old offender;

“It stands to reason that a term of imprisonment will bring you immense hardship given your old age and your impaired hearing. However, the harm you have done to the victim and to her future is not outweighed by the hardship you may endure in serving a prison term. The victim who is 8 years old now will suffer throughout her remaining lifetime due to your shameful conduct.”

19. Although you are feeble and old, the offences that you have committed cannot be condoned by any civilized society. Courts always denounce sexual offences on young children with abhorrence. Exposure to sexual activities at young ages leave scars in their minds for the rest of their lives.

20. In the circumstances, you should serve an aggregate sentence of 15 years and 7 months imprisonment.



A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Rangajeeva Wimalasena
Acting Judge

Solicitors

Solicitors for the State : Office of the Director of Public Prosecutions

Solicitors for the Accused: Legal Aid Commission