

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 57 of 2018

STATE

vs.

RUSIATE KOTOBALAVU

Counsel:	Ms. K. Semisi for the State Mr. F. Vosarogo with Mr. Cakau for all Accused Persons
Date of Hearing:	11 th , 12 th , 13 th and 17 th September 2019
Date of Closing Submissions:	18 th September 2019
Date of Summing Up:	19 th September 2019
Date of Judgment:	20 th September 2019
Date of Sentence:	04 th October 2019

SENTENCE

1. Mr. Rusiate Kotobalavu, you stand convicted to one count of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act, which carries a maximum penalty of life imprisonment.
2. It was proved during the hearing that you have called the complainant into your house when she was walking back home from her grandmother's place in the evening of the 8th of May 2012. You then took her to the kitchen and asked her to remove her clothes. Once she removed her clothes, you penetrated into her vagina with your penis. You have committed this crime on her while three other youths were present. The complainant was eleven years old at that time.

3. Rape is one of the most humiliating and distressing crimes. It becomes more serious when it is involved with a child victim. Hence, I find the rape in this nature is a very serious crime. In this case, the complainant was sexually abused by a person who is known to her. This form of sexual exploitation of children by the known adult is a serious offence.
4. The main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also reflect that the society denounce such crimes without any reservation.
5. Hon. Former Chief Justice Gates in Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2 November 2018)) held that the tariff to rape of a child is between eleven (11) to twenty (20) years' imprisonment period. The tariff that was in force for the offence of rape of a child in 2012 ranges from seven (07) years to fifteen (15) years. (State v Tuwai [2011] FJHC 287; HAC075.2010S (24 May 2011)).
6. You have asked the complainant to come to your house. She had trusted you and walked into your house. Then you took her to the kitchen and committed this crime while three other youths were present. The complainant was eleven years old at that time. Accordingly I find the level of culpability is substantially high.
7. The victim impact report provides the details of the emotional and psychological effects that this crime have caused to the complainant. It has adversely affected her life making her a withdrawn and isolated personality. In view of these reasons, I find the level of harm caused by this crime is substantially high.
8. In view of the seriousness of the offence and the level of harm and the culpability, I select ten (10) years as the starting point.

9. You have breached the trust that the complainant had in you as both of you have grown up in the same village together. You were 20 years old at that time. The age difference between you and the complainant is nine years, which is reasonably high. I consider these factors as aggravating factors.
10. The learned counsel for the defence in his mitigation submissions submitted your personal and family background, which has no mitigatory value.
11. You are a first offender. There is no evidence or information before this court to consider your general reputation in the society and also no information about any significant contribution that you have made to the community. Therefore, you are only entitled for a meager discount for your previous character.
12. This crime took place in 2012. During the last seven years, you have moved on your life. Therefore, you are entitled for a discount for the delay in prosecution of this offence.
13. In view of the aggravating factors, I increase three (3) years, making thirteen (13) years as an interim term. I reduce two (2) years for the delay in prosecution and the previous good character, reaching the final sentence as eleven (11) years imprisonment.
14. Having considered the seriousness of this crime, the level of culpability and harm, the purpose of this sentence, your age and opportunities for rehabilitation, I find seven (7) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of seven (7) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

15. Accordingly, I sentence you to a period of **eleven (11) years** imprisonment for the offence of Rape contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act. Moreover, you are not

entitled to any parole for a period of seven (7) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

16. You have been in remand custody for this case for a period of nearly twenty seven (27) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of one (1) month as a period of imprisonment that have already been served by you.
17. Accordingly, the actual sentencing period is **ten (10) years and eleven (11) months** imprisonment with non-parole period of **six (6) years and eleven (11) months**.
18. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva

04th October 2019

Solicitors

Office of the Director of Public Prosecutions for the State.
Vosarogo Lawyers for all Accused Persons.