

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

High Court Criminal Case No. HAC 417 of 2018

BETWEEN : STATE

AND : ILISAVANI CAVA

Counsel : Ms U. Tamanikaiyaroi for the State
Ms R. Nabainivalu and S. Hazelman for the Accused

Date of Hearing : 18 & 19 February 2020

Closing Speeches : 19 February 2020

Date of Summing up: 20 February 2020

Date of Judgment : 21 February 2020

Date of Sentence : 28 February 2020

(The name of the complainant is suppressed and will be referred to as "SD")

SENTENCE

1. You, Ilisavani Cava stand convicted for one count of rape contrary to section 207(1) and (2)(b) of the Crimes Act. The particulars of offence read as follows;

“Ilisavani Cava on the 31st day of October 2018, at Nasinu in the Central Division, penetrated the vagina of SD, with his fingers without her consent.”

2. You were indicted for rape on 6 February 2019 and the trial commenced on 18 February 2020. At the end of the trial the assessors returned with a unanimous opinion that you are guilty of rape. On 21 February 2020 you were convicted for rape by the judgment delivered by this court.
3. According to the evidence adduced in this case, on 30 November 2018 at about 10 pm the complainant was walking towards Valalevu, Nadera after visiting a cousin. You started following her. Suddenly, you touched her and showed her a pornographic video on our phone. The complainant refused to watch the video and kept on walking. Then you pushed her down and made her lean on to a fence. You kissed her neck and squeezed her breasts. You slid one of your hands into her pants and inserted three of your fingers into her vagina. You pushed the fingers in and out and the complainant felt pain. When a lady from a nearby house came out, you took her a bit away from there. You pulled a knife out of your canvass and threatened her to keep quiet. When you were trying to open your trousers, the complainant kicked you and ran away. She got into a taxi and proceeded to Valalevu Police Station. A report was lodged, and you were arrested soon after the incident. The medical report of the complainant confirmed fresh tears in her hymen and a superficial abrasion at fossa navicularis of the complainant.
4. Your offending is opportunistic. Before preying on her you tried to show a pornographic video to the complainant, who was a 15-year-old child at the time of the incident. You threatened the complainant with a knife to silence her. Further the victim impact statement reveals the extent of psychological and emotional impact on the complainant. Those factors aggravate your offending.

5. In mitigation your counsel submitted that you are 26 years of age and single. It was informed that you are the sole breadwinner and you support your grandparents and two younger siblings. You are a first offender. You had spent 1 month and 12 days in remand custody.
6. It should be noted that your personal circumstances carry only a little mitigation value. However, you will be given credit for your previous good character.
7. In Aitcheson v State [2018] FJSC 29; CAV 0012.2018 (2 November 2018) the Supreme Court remarked as follows while enhancing the tariff for child rape;

“[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.”

8. The maximum punishment for rape is life imprisonment. Having considered the objective seriousness of the offence you committed I pick a starting point of 12 years. I add 4 years for the aggravating factors. For mitigation I decide to give you a discount of 3 years.

9. Accordingly, I impose 13 years imprisonment on you.
10. The time in remand custody has to be regarded as a period of imprisonment already served by you. Therefore, I deduct 6 weeks from your sentence to reflect the time you spent in remand custody.
11. Accordingly, you should serve a period of 12 years 10 months and two weeks imprisonment. You are eligible for parole after 8 years.

30 days to appeal to the Court of Appeal



At Suva

28 February 2020

Solicitors:

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused