

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 384 OF 2018

STATE

V

ARE AMAE

Counsel : Ms. U. Tamanikayaroi for State
: Ms. L. David for for Defence

Date of Summing Up : 23 October 2020

Date of Judgment : 23 October 2020

Date of Sentence : 28 October 2020

(Name of the Complainant is suppressed)

SENTENCE

1. Mr Arc Amae you have been convicted of two counts of Rape and one count of Resisting Arrest. The information reads as follows:

COUNT 1

Statement of Offence

RAPE : Contrary to section 207(1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

ARE AMAE on the 5th day of October 2018 at Samabula in the Central Division penetrated the vulva of MN, a child under the age of 13 years, with his tongue.

COUNT 2

Statement of Offence

RAPE : Contrary to section 207(1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

ARE AMAE on the 5th day of October 2018 at Samabula in the Central Division penetrated the vulva of MN, a child under the age of 13 years, with his penis.

COUNT 3

Statement of Offence

RESISTING ARREST: contrary to Section 277(b) of Crimes Act 2009.

ARE AMAE on the 5th day of October 2018 at Suva in the Central Division resisted special Constable 4349 Tevita whilst effecting arrest in the due execution of his duty.

2. The victim is your niece. She was a child of 12 years of age at the time of the offence. You knew she is from a broken family. She came under your roof because she had no other place to go. You used to drink at home and be harsh towards her. She found your house to be not conducive for her education and went to her mother's place.

When she was returning home from school, you went to the Suva Bus Stand to meet her. You insisted for her to accompany you under the pretence that she was supposed to pick some herbal medicine for her grandmother. You took her to Wairua Road and went down one hill where you pushed her down to the mud. Then you kissed and undressed her. She said *'I did not believe that you would do such thing to me'*. You said for her to 'shut up' and closed her mouth and nose. You threatened to kill her if she shouted. You said you had wanted to do that to her long ago. You made her lie down and put your penis into her vagina. She felt the pain in her vagina. You then started licking her vagina and sucked her breasts. You told her not to tell anyone what had happened.

3. The maximum penalty for rape is life imprisonment. The tariff for rape of a child ranges from 11 years to 20 years imprisonment. [Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018)]. You committed two forms of rape, first by penetrating her vagina with your tongue and then with your penis. It was an unlawful and forcible invasion of her privacy and a gross violation of her person. Rape is rape. No distinctions are drawn as to gravity of offending dependent on the object used to penetrate or of the orifice of the victim penetrated. [Ram v State [2015] FJSC 26; CAV12.2015 (23 October 2015)].
4. In deciding your sentence, I must have regard to the proportionality principle enshrined in the Constitution, Section 4 of the Sentencing and Penalties Act and the applicable guidelines issued by the courts.

5. Rape of a child is the most serious form of sexual violence in Fiji. The Constitution requires the courts to protect children who are vulnerable segment of our society. They are entitled to live their lives free from any form of physical or emotional abuse. They are entitled to trust their family members for protection. The family members who sexually abuse children should receive condign punishment so as to reflect society's outrage and denunciation.
6. The increasing prevalence of such offending in the community calls for harsher punishments to ensure deterrence. Having considered the gravity of the offence of rape and the harm caused to the victim, I start your sentence with a starting point of 12 years.
7. It is aggravating that you have committed these rapes on a vulnerable child. You knew that her parents are separated and she was in a helpless situation. She trusted you as her uncle and she did not believe that you would do this to her. You breached that trust. Given the age gap between you and the victim, you are a fatherly figure to her. The element of pre-panning is manifested in your statement that you had wanted to do that to her long ago. You threatened to kill her and warned her not to tell anyone what you had done to her. For these aggravating features I would increase your sentence by 4 years.
8. I have considered the mitigating features brought to my attention by your lawyer. You are 37 years of age, self employed and a father of an infant. You seek mercy of this court. Since you have four active previous convictions, you will not get any discount on account of good character. I deduct one year to reflect these mitigating features to arrive at a sentence of 15 years imprisonment.
9. You have spent approximately 2 years in the remand centre. The remand period is deducted from your sentence to arrive at a sentence of 13 years' imprisonment for each count of Rape.

10. In respect of the 3rd count (Resisting Arrest), there is no evidence that you have assaulted a police officers in a manner described in the amended penalty section of Act No, 5 of 2018. In view of that, the maximum sentence for Resisting Arrest under Section 277(b) in this case should be an imprisonment term of 5 years. There is no set tariff for this new offence. Having considered the seriousness of the offence, I impose a sentence of 18 months imprisonment for count 3 to be served concurrently with each of the sentence for counts 1 and 2.
11. To balance your chances of rehabilitation with the deterrent effect of the sentence, I fix a non-parole period at 10 years. You are therefore eligible to be released on parole after serving 10 years in the correction centre.
12. Summary
- Count 1- 13 years' imprisonment.
Count 2- 13 years' imprisonment.
Count 3- 18 months' imprisonment.
- All the sentences are to be served concurrently with a non-parole period of 10 years.
13. You have 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

At Suva

28 October 2020

Solicitors: Office of Director of Public Prosecution for State
Legal Aid Commission for Defence