

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 184 of 2020

STATE

vs.

TR

Counsel: Ms. K. Semisi for the State
Mr. J. Rabuku with Mr. L. Cati for Accused

Date of Hearing: 18th, 19th and 20th January 2021

Date of Closing Submission: 20th January 2021

Date of Summing Up: 21st January 2021

Date of Judgment: 22nd January 2021

Date of Sentence: 03rd February 2021

SENTENCE

1. The name of the Complainant and the Accused are suppressed. Hereinafter the Complainant will be referred to as **KJ** and the Accused will be referred to as **TR**.
2. The Court found Mr. TR guilty of one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum sentence of life imprisonment, one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act, which carries a

maximum sentence of life imprisonment and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act, which carries a maximum sentence of ten years imprisonment.

3. It was proved during the hearing that you had dragged and forcefully lifted the Complainant to your house when she came out from Vilma's canteen. You had then forcefully tied up her mouth with a piece of cloth. After that, you had licked her vagina and then sucked her breast. You then penetrated the vagina of the Complainant with your penis.
4. Rape is one of the most humiliating and distressing invasions of the integrity of the human body. It becomes more serious when it is involved with a child victim. Hence, I find the Rape of this nature is a severe 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.
5. The Supreme Court of Fiji in **Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018)** held that the increasing prevalence of crimes of this nature demands the Courts to consider widening the tariff for the Rape against children. The Supreme Court of Fiji held that:

"The increasing prevalence of these crimes, characterized 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."

Purpose of the Sentence

6. In view of the severe nature and prevalence of the crimes of this nature, the main purpose of this sentence is founded on the principle of deterrence. It is the Court's responsibility 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 harsh and long custodial sentence is inevitable for the offences of this nature to demonstrate the gravity of the offence and reflect that civilized society denounces such crimes without any reservation.

Tariff

7. Gates CJ in Aitcheson v State (Supra) held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period. Period of 2 years to 8 years imprisonment is the tariff for the sexual assault.
8. These two counts of Rape and one count of Sexual Assault are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence under Section 17 of the Sentencing and Penalties Act.
9. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. She is finding difficulties in her sleep. Therefore, I find the level of harm in this offence is significantly high.
10. You had found an opportunity when the Complainant was alone. You then unleashed your crime when she was not in a position to look for help or chance of escape. You have used substantive force by dragging and lifting her to your house and then tied her mouth with a piece of cloth. You had threatened her that you would hurt her if she informs anyone about this crime. I accordingly find that the level of culpability is significantly high in this crime.

11. Having considered the seriousness of the crime, the purpose of the sentence, the level of culpability and harm, I select twelve (12) years as the starting point.
12. You have breached the trust that the Complainant had in you as an elderly relative and neighbour. The age difference between you and the Complainant is substantially high. By committing this crime, you have exposed this fifteen-year-old child to sexual activities at a very young age, thus preventing her from having a natural growth of maturity in her life. I consider these grounds as aggravating factors in this offending.
13. The learned Counsel for the Defence in his mitigation submissions submitted your personal and family background, which I do not find any mitigatory value.
14. The learned Counsel for the Defence submitted that you are a first offender; hence, you are entitled to a substantive discount. Furthermore, the learned Counsel submitted that you have been a respectable member in your community and engaged in church activities. I find that your previous good character, especially the fact that you have not been tainted with any previous conviction for an offence of sexual nature, would have definitely allowed you to freely move around in the community without any suspicion of risk. The community has perceived you as a man of good character and not as a child paedophile and allowed you to be feely moved in the community. Accordingly, I do not find your previous good character has any significant mitigatory value. Hence, you are only entitled to a meager discount for your previous good character.
15. In view of the reasons discussed above, I increase four (4) years for the aggravating factors to reach an interim period of sixteen (16) years. Given your previous good character, I give you one (1) year discount. Your final sentence is fifteen (15) years imprisonment.
16. Having considered the seriousness of this crime, the purpose of this sentence, your age, and opportunities for rehabilitation, I find thirteen (13) years of the non-parole period

would serve the purpose of this sentence. Hence, you are not eligible for any parole for thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

17. Accordingly, I sentence you for **fifteen (15) years** imprisonment as an aggregate sentence for the two counts of Rape and one count of Sexual Assault as charged in the information. Moreover, you are not entitled to any parole for thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

18. You have been in remand custody for this case for nearly forty-three (43) days before the sentence as the Court did not grant you bail. In pursuant to Section 24 of the Sentencing and Penalties Act, I consider two (2) months as a period of imprisonment that you have already served.
19. Accordingly, the actual sentencing period is **fourteen (14) years and ten (10) months** imprisonment with a non-parole period of **twelve (12) years and ten (10) months**.
20. Thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

03rd February 2021

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of Law Solutions for the Accused.