

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 178 of 2019

STATE

V

TOBIA KORODUVA

Appearances : Ms. Semisi, K for the State
 : Ms. Mishra, N for the Accused

Judgment : 19 April 2022
Sentence : 05 May 2022

SENTENCE

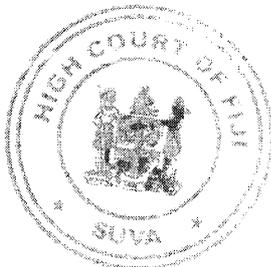
1. Following a trial, the Accused was convicted of 2 representative counts of rape.
2. It was not disputed that there had been a number of incidents of sexual intercourse between the Accused and the Complainant during both periods specified in the charge, the defence being that the Complainant had agreed to the acts each time.
3. The Accused was an uncle of the Complainant. He is the spouse of her mother's elder sister. The Complainant and her family had stayed together with the Accused and his wife first in Makoi, and then in Colo-i-Suva. During this time, the Accused had had sexual intercourse of the Complainant without her consent, followed by threats not to tell anyone or he would do something to her or her little sister.
4. The matter did not come to light until it was discovered that the Complainant was pregnant. I accepted that the Complainant had not told anyone, fearing for her safety and for that of her younger sister.

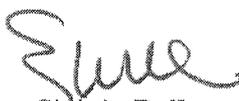
5. The Accused was arrested and when interviewed by the Police, denied sexual intercourse with the Complainant. A DNA test conducted on the child born to the Complainant on 18 August 2019 revealed that the Accused was the father. Thereafter, the Accused admitted sexual intercourse with the Complainant but said it was consensual.
6. I accepted the Complainant's version of events that on both occasions she relayed in Court, she had resisted and told the Accused not to do the things he was doing to her. I believed her account that the Accused had threatened her not to tell anyone or he would do something to her or her little sister.
7. I did not believe the Accused person's defence that he and the Complainant had been in a relationship and that the Complainant had consented to sexual intercourse with him. I found that in each count, the Accused had known the Complainant was not consenting to sexual intercourse with him.
8. The Complainant became pregnant and her education was cut short. At the trial, the Accused showed neither remorse nor responsibility for any harm resulting to the Complainant as a result of his actions.
9. Rape is a most serious offence, constituting as it does what the Court in Ram v State Petition for Special Leave to Appeal No: CAV 12/2015, 23 October 2015 stated as being

...the unwanted invasion, the violation of the person, the forcible intrusion into the privacy and body of another.
10. The maximum penalty is life imprisonment. The tariff for the rape of a child is 11 years – 20 years imprisonment. This increased tariff is indicative of the Court hardening its heart against the rape of children, and its “denunciation... in the strongest terms.” (Aitcheson v State Criminal Petition No: CAV 0012.2018, 2 November 2018)
11. In Ram (supra), the Court stated:

The community is rightly concerned that anyone who molests or rapes a young child will bring a severe penalty upon himself. That message cannot change.

12. In sentencing the Accused, I bear in mind the sentencing guidelines in ss. 4 and 15 of the *Sentencing and Penalties Act* of 2009.
13. The Accused is 35 years old. He was educated up to Form 5. He was a security officer at one time but is now a subsistence farmer supporting his wife and elderly parents. He has since married the Complainant's aunt who was his de facto partner at the time of these offences. They have no children together. Prior to this conviction, he had a clean criminal record. His clean record is a mitigating factor.
14. The Accused was a much older close family relative who was in a position of both authority and trust over the Complainant. He threatened the victim into silence and not report what he was doing to her. The victim became pregnant as a result of the offending, and her education cut short. These are serious aggravating features.
15. Both counts arise out of a series of offences of the same nature. I consider an aggregate sentence for both counts is justified in the circumstances. For all of the reasons given above, and having considered also the period of about 3 months in remand, I sentence the Accused to 14 years imprisonment, with a non-parole period of 12 years.
16. This being a domestic violence offending, I issue a permanent domestic violence restraining order against the Accused to protect the Complainant. The Order is for standard non molestation conditions and non-contact conditions pursuant to ss. 27, 28 and 29 (1) (2) (a) (b) and (e) of the *Domestic Violence Act*.
17. 30 days to appeal to the Court of Appeal.




Srainiu Bull
ACTING JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused