

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 241 of 2020

BETWEEN : **THE STATE**

AND : **VARINAVA DELANA**

Counsel : Ms. Semisi, K for the State
: Mr. Buakula, K with Ms. Prakash, S for the Accused

Date of Trial : 1, 2, 5 August August 2022
Date of Judgment: 20th September 2022
Date of Sentence : 30 September 2022

SENTENCE

1. The offender stands convicted of two counts of sexual assault and four counts of rape. He is before the Court now for sentencing.
2. Though the offender is the victim's uncle, the relationship between them was really that of step-father and daughter. The victim called him "Ta" meaning father. He was the partner of the victim's aunt who had brought her up from when she was three years old. The offender and his partner were the only parents the victim ever knew, her biological parents having died when she was still very young.
3. The victim and her aunt moved to live with the offender in Raiwai in 2014 when she was in Year 4. In 2018, the offender started sexually assaulting her by touching her breasts in a playful way. Later, he would touch her vagina and fondle her breasts over her clothes. When she did not report these acts, he had sexual intercourse with her without her consent and despite her objections.

4. She did not report until she left home with her mother's ATM card and went to Tacirua. The offender and her mother went with a Police officer the next day to get her. At the Police Station, she told the Police about what the offender had been doing to her at home.
5. In a set of facts agreed to by both parties, the offender admitted having sexual intercourse with the victim during the periods alleged in the charge but denied the allegations of sexual assault. He chose not to give evidence but his defence put to the victim was that she had consented to sexual intercourse with him.
6. On all the allegations, I believed the victim's evidence and rejected the defence put to her.
7. At the time of the sexual assaults in 2018, the victim would have been between 12 and 13 years old. She was between 13 and 15 years of age when she was raped.
8. Sexual offences are abhorrent by nature. They are even more so when perpetrated on young children. The seriousness of these offences is reflected not only in the maximum penalties fixed by the legislature, but also in the range of sentences passed by the Courts for these offences.
9. The maximum penalty for rape is life imprisonment. The sentencing tariff for the rape of children is now between 11 to 20 years imprisonment. (*Aitcheson v State* Criminal Petition No: CAV 0012.2018, 2 November 2018)
10. The maximum penalty for sexual assault is ten years imprisonment. The tariff is between 2 to 8 years imprisonment. Helpful sentencing guidelines were set out in (*State v Laca* Criminal Case No: HAC 252 of 2011, Decision of 14 November 2012) where Madigan J adopted the following from the *United Kingdom's Legal Guidelines for Sentencing*:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

- (i) Contact between the naked genitalia of the offender and another part of the victim's body;
- (ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;
- (iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

- 11. The offender is 54 years old. He is a security officer, earning \$130 per week.
- 12. This is his first offending, so he is a person of previous good character. An offender's previously clean record is ordinarily, a strong mitigating factor. In the case of this offender, the weight of his being a first offender is significantly reduced when one considers that he had committed these offences over a period of time against a child who was in his immediate care and over whom he held a position of trust and authority. The offences were a gross breach of that trust. The victim is now 17 years old. At the time of the offences, she was between 12 and 15 years old. There is a huge age difference between her and the offender. He used harshness to instil fear in the victim. On one occasion, the victim was told she would not have tea after school and would also not have dinner if she did not have sexual intercourse with him. These are the aggravating features.
- 13. The offences in Counts 1, 4 and 5 are representative counts, meaning the Prosecution alleged more than one separate act of offending in each of these counts. For each of these counts, the Court was satisfied that at least one incident of the offences alleged had occurred within the specified dates in the information.
- 14. For each representative count, the offender is sentenced only for the incident proved beyond reasonable doubt.
- 15. The convictions are in respect of a series of offences of the same or similar character. Section 26 of the Sentencing and Penalties Act allows an aggregate sentence to be imposed in such cases.

16. For the rape charges, I take an aggregate starting point of 11 years imprisonment, add 5 years on account of the aggravating features, and deduct 1 year for the mitigating factor.
17. For sexual assault, I impose an aggregate sentence of 3 years imprisonment.
18. All sentences are to be served concurrently. The total sentence is 15 years imprisonment. The offender has spent just over 1 year 3 months in remand. I deduct 1 year 4 months as part of sentence served. The remaining sentence to be served is 13 years 8 months imprisonment, with a non-parole period of 11 years 8 months.
19. The victim's name is permanently suppressed.
20. The existing interim domestic violence restraining order is hereby made permanent in favour of the victim. The permanent order is to contain the standard non-molestation conditions in s.27 and in respect of contact, those conditions in s. 29 (1) (2) (a) (b) and (e) of the Domestic Violence Act.



Siainiu F. Bull
Acting Puisne Judge

Solicitors:

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