

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 57 OF 2020

THE STATE

v.

APENISA CUQU

Counsel: Ms S. Naibe for State

Ms K. Vulimainadave with Mr R. Filipe for Defence

Date of Judgment: 05 October 2023

Date of Sentencing Submissions: 18 October 2023

Date of Sentence: 19 October 2023

(Name of the Complainant is suppressed. She is referred to as AL)

SENTENCE

1. Mr. Apenisa Cuqu, you stand convicted after trial of one count of Rape on the following information.

Statement of Offence

RAPE: Contrary to section 27 (1) and (2)(b) and (3) of the Crimes Act, 2009.

Particulars of Offence

APENISA CUQU on the 7th day of March 2020 at Vatukacevaceva Village, Rakiraki, in the Western Division penetrated the vagina of AL a child of under the age of 13 years, with his finger.

2. The victim in this case is your cousin. She was only two years old toddler at the time of the offence. When the victim's mother was away, you were seen playing with her on the porch of the house at night. When the light was switched off at the porch, you went to the room. The victim also came to the room. Whilst in the room, you touched the victim and inserted your finger in to her vagina. Being alerted by the darkness on the porch, victim's aunty came to the house from outside of the house. She saw the victim lying on the floor of the room without her pants. You were sitting on the bed, wearing a towel. The victim ran to her aunty and complained that you touched her 'ball' and she started crying. When the mother came home late night, the victim complained to her mother and on the following morning to the police. The victim was medically examined at the Rakiraki Hospital where the doctor found fresh injuries on victim's vagina and that her hymen was not intact. At the caution interview, you confessed to the police that you penetrated the vagina of the victim with your finger.
3. The maximum punishment for Rape is life imprisonment. The sentencing tariff for juvenile rape ranges from 11 years to 20 years' imprisonment. [Aitcheson v [2018] FJSC 29; CAV0012.2018 (2 November 2018)].
4. In selecting your sentence that is best suited to you, I must have regard to the proportionality principle enshrined in the Constitution and the Sentencing and Penalties Act 2009 (SPA). I would also have regard to Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having due regard to the seriousness of the offence and harm caused to the victim, I would select the starting point. The final sentence will be determined after making due adjustments for the aggravating and the mitigating factors.
5. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on Rights of the Child to which Fiji is a party and our own Constitution require the courts to protect the children who are vulnerable members of our society. Our society and the children,

expect elders and relatives in a domestic setting to care and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.

6. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to mark the society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and to others with similar impulses that, if anyone yield to this crime will meet with severe punishments.
7. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 11 years from the bottom range of the tariff as the first step in the sentencing process.
8. I identified the following aggravating and mitigation factors with the help of the submissions filed by the Counsel:

Aggravating factors:

- (a). There is a considerable age gap between you and the victim. You were 28 years old at the time of the offence, when your victim was a toddler aged just two years.
- (b). You took the opportunity and exploited the vulnerability of a child when her mother was away.
- (c). You caused injuries to victim's vagina.
- (d). You are victim's cousin and an adult in a domestic environment.

(e). Victim's mother left the victim home because she trusted you. You breached that trust.

Mitigating Factors:

(a). In mitigation, your Counsel informed that you are now 32 years of age and a subsistent farmer. You are living with your mother in Rakiraki.

(b). You cooperated with the police during the course of the investigation.

9. I add 3 years to the starting point of 11 years for above mentioned list of aggravating factors to arrive at an interim sentence of 14 years and reduce 1 year for mitigating factors to arrive at a sentence of 13 years imprisonment.

10. According to the State, you had been in remand roughly for 2 years. The remand period is deducted from your sentence to arrive at a final sentence of 11 years' imprisonment.

11. Taking into consideration your potential for rehabilitation and the gravity and the impact of your offence on the society, I impose a non- parole period of 09 years.

12. Summary

Mr. Apenisa Cuqu, you are sentenced to an imprisonment term of 11 years with a non-parole period of 09 years.

13. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge

Judge

19 October 2023

At Lautoka

Solicitors:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence