

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 222 of 2015

STATE

Vs.

JD

Counsel: Ms. U. Tamanikaiyaroi for the State
Ms. S. Prakash for Accused

Date of Hearing: 13th to 14th August 2018

Date of Summing Up: 16th August 2018

Date of Judgment: 17th August 2018

Date of Sentence: 20th August 2018

SENTENCE

1. The names of the complainant and the accused are suppressed.
2. You are found guilty and convicted by this court for 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 two counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum sentence of life imprisonment.
3. It was proved at the conclusion of the hearing that you had entered into the room while the complainant was sleeping therein in the night. You had then inserted into her vagina with

your finger and then inserted your penis into her vagina without her consent. Few months after the first incident, you had entered into the room again, while the complainant was sleeping and inserted your penis into her vagina without her consent. The complainant was fourteen years old at that time.

4. This is a case of sexually exploitation of a young child by a known person within her own domestic environment. Young children are the most vulnerable victims of sexual assault of this nature. Such sexual exploitation of children by known people has become a social menace in this country, which requires a more constructive and affective intervention of the law enforcement authorities, including the Court of Law. Therefore, I find this offending is a very serious crime.
5. In view of the seriousness of this offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Hence, the purpose of this sentence is founded on the principle of deterrence and protection of community. Moreover, the Court must demonstrate in sentencing that the offenders of this nature are socially abhorrent.
6. Hon. Chief Justice Gates in Anand Abhay Raj [2014] FJSC 12; CAV0003.2014 (20 August 2014) held that the tariff for rape of a child is between 10 - 16 years imprisonment period.
7. The Complainant was fourteen years old at that time. Undoubtedly, a crime of this nature adversely affects the child both psychologically and socially. Hence, I find the level of harm is substantially high in this crime.
8. You have committed these crimes on the Complainant when she had no prospect of resist or escape. In respect of the first incident, you had gone to the complainant when her parents were away in Suva. In respect of the second time, you went and committed the crime, when her father was away in Suva. I accordingly find the degree of culpability in this offending is substantially high.

9. All of these offences are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
10. You have blatantly breached the trust reposed in you by the complainant as her family accepted and provided you lodging in their house, while you were in Kadavu. The age difference between you and the complainant was substantially high at the time of this crime took place. You were twenty five years old while the complainant was fourteen years old at that time. By committing this crime, you have denied the complainant, her natural growth in the life. I consider these factors as aggravating circumstances of this crime.
11. You are a first offender. Therefore, you are entitled for a substantive discount for your previous good behaviours pursuant to Section 4 (2) of the Sentencing and Penalties Act.
12. The learned Counsel for the defence submitted in your mitigation about your personal and family circumstances. However, such family and personal mitigations have very minimal mitigatory value.
13. In view of the level of harm and culpability, the seriousness of this offence, the aggravating and mitigating circumstances, I sentence you for a period of fourteen (14) years imprisonment as an aggregate sentence for one count of Rape, contrary to Section 207 (1) and (2) (b) and two counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act.
14. Having considered the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find twelve (12) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of twelve (12) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.


Head Sentence

15. Accordingly, I sentence you for a **period of fourteen (14) years imprisonment** for one count of Rape, contrary to Section 207 (1) and (2) (b) and two counts of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act. Further, I order that you are not eligible for any parole for a period of **twelve (12) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of The Sentence

16. You have been in remand custody for this case for a period of twenty one (21) days as you were not granted bail by the Court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of one (1) month as a period of imprisonment that have already been served by you.
17. Accordingly, the actual sentencing period is **thirteen (13) years and eleven (11) months** imprisonment with non-parole period of **eleven (11) years and eleven (11) months**.
18. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
20th August 2018

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the Defence.