

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 42 of 2017

THE STATE

V

TEVITA RASUAKI

Counsels: Mrs. A. Vavadakua for the State
Mr. H. Robinson for the Accused

Date of Trial: 21 August 2018
Date of Judgment: 22 August 2018
Date of Sentence: 23 August 2018

SENTENCE

1. The accused has been convicted by this Court after trial of one count of criminal intimidation and one count of digital rape.
2. On the 20th April 2017 the victim ("UM") was at home alone in a village in Vanua Levu. She was 18 years old and she was looking after a toddler at the time. She was dressed in a towel on her way to bath when the accused, her cousin appeared. He was brandishing a knife and entered the house. He took off all his clothes and touched her breasts. He made her lie down

and raped her with his fingers. He threatened her by saying that if she shouted he would stab her and the toddler. The girl managed to flee with the child and go to where her mother was working. She was in an agitated state, the mother said, and she told her mother what had happened. The matter was reported to the Turaga-ni-Koro and then to the Police.

3. The maximum penalty for rape is life imprisonment and sentences for rape of an adult range from 7 years to 25 years (***Kasim*** Cr. App 14 of 1993 – C.A. and ***Marawa*** [2004] FJHC 338).
4. In mitigation, counsel for the accused submits that his client is 38 years old and a farmer of crops living in Cakaudrove. He lives with his parents, however he has a wife and 5 year old child living in Taveuni. He supports them and they are not estranged.
5. Apart from his wife and child he also supports his parents and two younger siblings who attend school.
6. He has no prior convictions in the last ten years and he spent two months in remand awaiting this trial.
7. Counsel submits that this offence should be regarded as being at the lower end of the sentencing tariff because there was no violence occasioned to the victim and he is said to be remorseful.
8. The State confirms the clear record for the last ten years and confirms the time spent in custody awaiting trial.

9. Counsel however reminds the Court of aggravating features in the case, including:
- Trespass into the victim's house
 - Sexual abuse in the presence of a child
 - Putting the life of a child at risk
 - Causing the victim to flee from her home
10. To those factors the Court would add the use of a knife to commit the crime. Although there is a separate charge of criminal intimidation, the knife was displayed after the intimidation to enable the accused to vitiate the victim's consent to his sexual violation.

Analysis

11. Rape being the more serious offence will be dealt with first. I take a starting point of 8 years and for the aggravating features referred to above, I add 5 years to that bringing the interim total to a term of 13 years imprisonment.
12. I cannot agree with defence counsel's view of the seriousness of this rape. It is very serious indeed; a rape with a knife in the presence of a child is not to be regarded as an offence at the lower end of the spectrum of rape offending.
13. In recognition of his clear record for the past ten years, I deduct one year from the sentence and for the time spent in custody and for his family circumstances, I deduct a further 6 months.
14. The accused is sentenced therefore to a term of imprisonment of eleven years, 6 months for the rape.

15. He will serve a term of ten years before he is eligible for parole.
16. Criminal intimidation is a summary offence and the maximum penalty is a term of 5 years. There is no tariff and the types of intimidation can be many from verbal threats through to threat of serious harm with a displayed weapon. The tariff for the offence should be a term of imprisonment of between 1 year and 3 years.
17. The intimidation in this case was serious, involving threats to stab the victim and the child that she was caring for so I sentence the accused to a term of three years for this offence, a term to be served concurrently with the rape sentence.

Summary

18. For the offence of rape the accused is sentenced to 11 years and 6 months.
19. For the criminal intimidation, he is sentenced to 3 years to be served concurrently with the rape sentence.
20. He is to serve a minimum term of ten years before being eligible for parole.



P. K. Madigan

P. K. Madigan
Judge

At Labasa
23 August 2018