

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 184 OF 2013

STATE

-v-

FUATIA MONISE

Counsel : **Ms. R. Uce for the State**

Accused in Person

Date of Judgment : **20th September, 2016**

Date of Sentencing Hearing : **04th October, 2016**

Date of Sentence : **06th October, 2016**

SENTENCE

[1] Mr. Fuatia Monise (Accused) was found guilty after trial and was convicted by this Court on following counts.

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 22nd day of October 2011, at Lautoka in the Western Division, unlawfully and indecently used his hand to touch the breasts of OLIVIA DRAUNA.

Count 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 22nd day of October 2011, at Lautoka in the Western Division, unlawfully and indecently used his hand to touch the vagina of OLIVIA DRAUNA.

Count 3

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 01st day of January 2012 and the 31st day of January 2012, at Nadi in the Western Division, unlawfully and indecently assaulted OLIVIA DRAUNA.

Count 4

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Decree, 2009.

Particulars of Offence

FUATIA MONISE, on the 01st day of February 2012 and the 28th day of February 2012 at Lautoka in the Western Division, inserted his penis into the vagina of OLIVIA DRAUNA, without her consent.

[2] Accused comes before this Court for sentence.

[3] The facts of the case in brief were that: Accused is 42 years old and married. He was in a *de facto* relationship with Complainant's mother and moved to Complainant's place leaving his family behind. Whilst Complainant's mother was away, accused came to the Complainant and touched her breasts and private area (over the cloths) on four occasions.

Accused also pulled her panty and forcefully penetrated her vagina with his penis. He also punched her thigh. Accused did not deny that he touched Complainant's breasts and private area. Accused also admitted having had sexual intercourse with the Complainant with her consent. Complainant's mother did not care much about accused's invasion on her daughter's body. Accused took advantage of Complainant's vulnerable situation and committed these offences. The matter finally came to light when Complainant shared the information with her cousin who finally took her to the police.

Sentence for Indecent Assault Count

- [4] The maximum penalty for Indecent Assault is 5 years imprisonment. The tariff for Indecent Assault is between 12 months and 4 years imprisonment. [*Ratu Penioni Rakota v The State*] Criminal Appeal No. HAA 0068 of 2002S (23 August 2002)). *State v Gonedau* FJHC 84 (5 March 2013).

Sentence for Rape

- [5] Maximum Sentence for Rape is life imprisonment. It is now well settled, and confirmed by the Supreme Court in *Anand Abhay Raj* CAV003.2014 that the tariff for rape of a juvenile is 10-16 years' imprisonment.

Starting Point

- [6] Rape is a serious crime. By prescribing life imprisonment for Rape convicts, the law makers expect Courts to impose harsher punishment on such offenders. In *Drottini v State* [2006] FJCA 26; AAU0001.2005S (24 March 2006) it was observed:

"There are few more serious aggravating circumstances than where the rape is committed on a juvenile girl by a family member or someone who is in a position of special trust. The seriousness of the offence is exaggerated by the fact that family loyalties and emotions all too often enable the offender or other family members to prevent a complaint going outside the family. If the child then remains in the family home, the rapist often has the opportunity to repeat the offence and to hope for the same protection from the rest of the family".

- [7] In *State v. AV* [2009] FJHC 24; HAC 192 21.02.2009 it was stated:

"rape is the most serious form of sexual assault.... Society cannot condone any form of sexual assault on children...Sexual offenders

- [8] Not only the offender himself but also the potential offenders must be deterred. The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.

[9] In the case of Mohammed Kasim v. State [1994] FJCA 25;AAU 0021j.93S (27 May 1994) it was stated:

"It must be recognized by the Courts that the crime of Rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point". (emphasis is mine)

[10] In State v Mario Tauvoli [2011] FJHC 216, HAC 027.2011 Justice Paul Madigan stated:

" Rape of children is a very serious offence in deed and it seems to be very prevalent in Fiji at the time. The legislation had dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound."

[11] I identify the offence of Rape as the head count and the sentence for Rape will therefore become the foundation in reaching the overall punishment.

[12] Having considered the gravity of the offence and the age of the Complainant, I select ten (10) years' imprisonment as the starting point for the Rape count.

Aggravating Circumstances

[13] The Complainant was 15 years old while the accused was 41 years at the time of the offence. The age gap between them is nearly twenty-six years. In principle, the younger the child and the greater the age gap between the offender and the victim, the higher the sentence should be.

[14] The accused was in a *de facto* relationship with Complainant's mother and was staying in Complainant's house. He was in a position of trust. He took advantage of his position and demonstrated a complete disregard for clearly defined societal, traditional and religious rules.

[15] Relationship between Complainant's mother and accused prevented Complainant from complaining to the authorities and standing up against the injustice caused to her. Accused took the advantage and repeatedly exploited her vulnerability.

[16] According to the Victim Impact Statement filed, victim has suffered physically and psychologically. Offending left a scar and trauma for the rest of her life.

[17] By committing these offences in a domestic setting, accused violated the Domestic Violence Decree.

Mitigating Circumstances

[18] The accused is married with 6 children. He makes a living doing casual jobs and earns \$ 150-200 a week. He is the sole breadwinner of his family.

[19] Accused cooperated with the police.

[20] He is a first offender and has maintained a clear record.

Sentence

[21] I add two (2) years to the starting point for above mentioned aggravating factors bringing the interim sentence to twelve (12) years' imprisonment. I deduct 1 year for the above mentioned mitigating factors bringing the sentence for Rape count to eleven (11) years' imprisonment.

[22] Accused was in remand for a period of nearly two months. Thus a period of two (2) months is deducted from the sentence. Now the final sentence for Rape count is ten (10) years and ten (10) months imprisonment.

[23] For these indecent assaults, I impose a sentence of 4 years' imprisonment for each count to be served concurrently.

[24] Sentences imposed on Indecent Assault Counts to be served concurrently with the prison term imposed on the Rape count.

[25] Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose a non-parole period of eight (08) years.

[26] 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge
Judge

At Lautoka
06th October, 2016

Counsel:

- **Office of the Director of Public Prosecution for State**
- **Accused in Person**