

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 68 OF 2015

STATE

vs

KRISHNA REDDY

Counsel : **Mr. Alvin Singh for the State**
: **Mr. K. Tunidau for the Accused**

Date of Judgment : **25th January, 2017**

Date of Sentence : **26th January, 2017**

SENTENCE

[1] KRISHNA REDDY, you are now brought before this Court for imposition of your sentence after being convicted on two counts of Rape contrary to Sections 207(1) and (2) (C) and (3) of the Crimes Decree No. 44 of 2009.

- [2] You pleaded not guilty to the charge of Rape. At the ensuing trial, this Court found you guilty and convicted you on both counts of Rape.
- [3] The victim was only six years old at the time of the offences. You became her stepfather when you married victim's mother in 2014. The victim called you Papa and looked up to you for love, affection, protection and support. You utterly disregarded your responsibility and sexually exploited her vulnerability.
- [4] You sent victim's mother to the shop and approached her in a pair of pants that was torn. You then penetrated her mouth with your penis.
- [5] In a few weeks later, you repeated the same shameful act on her.
- [6] You wielded undue authority over the victim and unleashed violence on her in the guise of disciplining her. You assaulted her in a brutal manner. As a result of which her mother had to complain to her school and to relocate her at her grandmother's place to ensure her safety.
- [7] According to Section 207(1) of the Crimes Decree No. 44 of 2009, the maximum punishment for Rape is imprisonment for life. Society views Rape as a worst form of sexual assault and an unwarranted invasion of a person's privacy and dignity. A harsher punishment is warranted not only as retribution but also to protect the young ones in society. A clear message has to be sent to the society that this type of behavior is not tolerated in Fiji.
- [8] The complainant was 6 years of age at the time of the Rapes and therefore, is a child. The tariff for Rape of a child is affirmed by the Chief Justice Gates in *Raj v State* [2014] FJSC 12. The starting point of imprisonment for Rape of a child is 10 years. The tariff is between 10 years to 16 years.

[9] In Mohammed Kasim v The State (unreported) Cr. Case No. 14 of 1993; of 27 May 1994, the Court of Appeal observed thus:

"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."

[10] In determining the starting point within the said tariff, Goundar J, in Koroivuki v State [2013] FJCA 15 has formulated the following guiding principles;

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff."

[11] In the light of the above guiding principles and considering the gravity of offending and the impact on the victim and, I commence your sentence at 11 years for each count of Rape.

[12] The aggravating factors are:

- I. You breached the trust the victim had towards you as a stepfather.
- II. The 25 years' age gap between you and the victim aggravated the offending.
- III. You inflicted violence and thereby instilling fear on the victim, you ensured that the matter was not reported to anybody.
- IV. You exploited the vulnerability of the victim.

- V. The victim had to be relocated from her house due to your violent behavior.
- VI. The offences you committed warrant harsher punishment under the Domestic Violent Decree.
- VII. You did not show any remorse or repentance and did not allow her to relieve her ordeal. In the contrary you relentlessly castigated the six-year-old victim as a layer who fabricated a false story to put you in trouble.

[13] I add 2 years on your sentence for above aggravating factors. Now your sentence is 13 years' imprisonment.

[14] The mitigating factors are:

- I. You are 34 years old and a father of two children.
- II. You are a first offender;
- III. You co-operated with the Police during investigations.

[15] I deduct 1 year from your sentence on the above mitigating factors. Now your sentence for each count is 12 years' imprisonment.

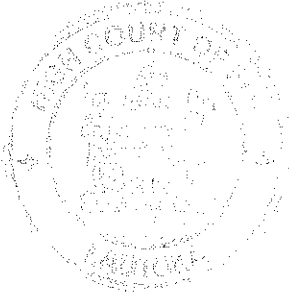
[16] In view of the Supreme Court decision in Tora v The State [2015] FJSC 23 and considering Section 18 (1) of the Sentencing and Penalties Decree, I impose a 9 years of non-parole period.

[17] Your final sentence is therefore as follows:

For each count of Rape – 12 years of imprisonment with a Non-parole period fixed at 9 years.

[18] Having considered the totality principle, I order the sentences to be served concurrently.

[19] You have 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

JUDGE

At Lautoka

26th January 2017

Solicitor : Office of the Director of Public Prosecution for the State
: Legal Aid Commission for the Accused