

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 124 of 2014

STATE

V

KENI BURENIVALU

Counsel : Mr. A. Singh for the State.
: Ms. V. Narara with Ms. V. Diroi for the
Accused.

Dates of Hearing : 13, 14, 15 September, 2017
Closing Speeches : 18 September, 2017
Date of Summing Up : 19 September, 2017
Date of Judgment : 21 September, 2017
Date of Sentence : 27 September, 2017

SENTENCE

(The name of the victim is suppressed he will be referred to as "SL").

[1] In a Judgment delivered on 21 September, 2017 the court found the accused guilty and convicted him for one count of rape as per the following information:

COUNT ONE

Statement of Offence

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

Particulars of Offence

KENI BURENIVALU between the 1st day of June, 2014 and the 30th day of June, 2014 at Yasawa in the Western Division, penetrated the anus of “**SL**” with his penis, without the consent of “**SL**”.

[2] The brief facts were as follows:

In the year 2014 the victim was 16 years of age between the 1st day of June 2014 and the 30th day of June, 2014 at about 10am he walked to the Octopus Resort from Nalauwaki village taking with him lunch for his uncle Kafoa. After 2pm the victim left the Resort on his way back to the village he was called by his uncle the accused.

[3] The accused gave his phone to the victim to watch a pornographic movie both the complainant and the accused watched the movie for 10 minutes.

[4] After watching the movie the accused took off the shorts of the victim took out his penis and inserted it inside his anus. The victim did not consent he shouted but the accused told him not to shout.

[5] According to the victim the accused had inserted his penis into his anus for about 10 minutes when the accused was inserting his penis the victim felt weak. After the accused had finished he told the victim not to tell anyone in the village and then left.

[6] The victim informed his aunt Taina Nalesu about what the accused had done to him. A few days after the incident the Village Nurse came to see the victim he showed the injuries to her. Thereafter the complainant was brought by the Nurse to the Police Station and then taken to the Lautoka Hospital for medical examination.

[7] Both counsel have filed helpful written submissions for which the court is grateful.

[8] Counsel for the accused presented the following personal details and mitigation on behalf of the accused:

- (a) The accused was 27 years of age at the time of the offending;
- (b) He is a first offender;
- (c) Unemployed resides with his wife and 3 months old niece whom he regards as his own daughter.

[9] I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs. The State, CAV 0003 of 2014* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

[10] The aggravating features are:

(a) Breach of trust

The accused was the uncle of the victim the offence was committed when the victim was alone. The accused breached the trust of a helpless child.

(b) Age Difference

The accused was 27 years of age and the victim was 16 years of age at the time of the offending. The age difference is substantial.

(c) Victim was vulnerable

The accused knew the victim was a special needs child and vulnerable when he committed the offence. As a result of what the accused did to the victim, the victim received injuries.

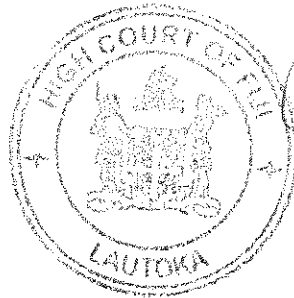
[11] The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The Supreme Court of Fiji in *Anand Abhay Raj (supra)* has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment.

- [12] Bearing in mind the objective seriousness of the offence committed I take 11 years imprisonment as the starting point of the sentence. I add 5 years for the aggravating factors bringing the interim total to 16 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I find the accused's good character has substantive mitigating value. I therefore reduce the sentence by 2 years.
- [13] I note the accused has been in remand for about 25 days, however in exercise of my discretion I further deduct the sentence for the remand period by 1 month in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served by the accused. The final sentence is 13 years and 11 months imprisonment.
- [14] Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim who was 16 years of age compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
- [15] Under section 18 (1) of the Sentencing and Penalties Act, I impose 11 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.
- [16] Mr. Burenivalu you have committed a very serious offence upon a victim who trusted you and was related to you. You knew the victim was a special needs child and you took advantage of him by calling him at a secluded area to watch pornographic movies. You have caused pain and sufferings to this innocent unsuspecting vulnerable victim due to your lustful desire.

[17] This court has an obligation to protect the vulnerable from any form of sexual violations therefore an immediate long term imprisonment is warranted.

[18] In summary I pass a sentence of 13 years and 11 months imprisonment for one count of rape that the accused has been convicted of with a non-parole period of 11 years to be served before the accused is eligible for parole.

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




Sunil Sharma
Judge

At Lautoka

27 September, 2017

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.