

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC. 224 OF 2015

STATE

V

JOPE CATI

Counsel : Ms. K. Semisi for State
Ms. T. Rigsby for the Accused

Dates of Hearing : 01st - 02nd August 2016

Date of Summing Up : 02nd August 2016

Date of Judgment : 03rd August 2016

Date of Sentence : 05th August 2016

(Name of the complainant is suppressed. Accordingly, the complainant will be referred to as JR)

SENTENCE

1. Jope Cati, after trial, you stand convicted of the following offence;

Statement of offence

Rape: Contrary to Section 207 (1) & (2)(b) & (3) of the Crimes Decree No. 44 of 2009.

Particulars of offence

JOPE CATI between the 1st day of December 2012 and the 31st day of January 2013 at Vanuabalavu, Lau in the Southern Division penetrated the vagina of JR, a child under the age of 13 years with his tongue.

2. The brief facts of this case are as follows. You are the cousin brother of the victim's grandfather. The victim was 4 years old at the time of the incident. She calls you Tua Cati. During the period between 01st December 2012 and 31st January 2013, you raped her by sucking her vagina. The complainant said that you opened her vagina and sucked inside causing her pain. You were 71 years old at the time of the offence. You told the complainant not to tell anyone about the incident. She infact did not tell anyone about what you did to her until she was questioned by her aunt when the aunt one day saw her and another boy pulling their pants up when they came out from a place they were hiding. The boy said that the complainant touched his private part.
3. Pursuant to section 207(1) of the Crimes Decree 2009 ("Crimes Decree") read with section 3(4) of the Sentencing and Penalties Decree 2009 ("Sentencing and Penalties Decree"), the maximum punishment for Rape is life imprisonment. It is settled that the sentencing tariff for rape of a child victim is a term of imprisonment between 10 to 16 years (*Anand Abhay Raj v State* [2014] FJSC 12).
4. I take 10 years imprisonment as the starting point of your sentence.
5. I consider the following as aggravating factors;
 - a) Breach of trust by being in a position similar to that of the grandfather of the victim;
 - b) The age gap between you and the victim is 67 years; and
 - c) You exploited the naivety and the vulnerability of the victim.
6. I consider the following as your mitigating factors;
 - a) You have no previous convictions;
 - b) You have served the Water Authority of Fiji for about 30 years before you retired at the age of 55;
 - c) According to your counsel you are remorseful. This was evident from your conduct during the trial; and
 - d) You had this case hanging over your head for a period of almost 3 years. You have made it a point to be present in court on every court date.
7. You are 74 years old now. Your counsel submits that you are a widower; you are educated only up to the 5th grade and that you are deaf.

8. It stands to reason that a term of imprisonment will bring you immense hardship given your old age and your impaired hearing. However, the harm you have done to the victim and to her future is not outweighed by the hardship you may endure in serving a prison term. The victim who is 8 years old now will suffer throughout her remaining lifetime due to your shameful conduct.
9. The court heard that this incident came to light when the victim was questioned by her aunt after she saw the complainant and another boy coming out from the place they were hiding, pulling their pants up. The boy had told the victim's aunt that the victim was touching his private part.
10. I am mindful of the fact that it was not proven beyond reasonable doubt that this conduct of the victim touching a boy's private part did take place and that it was a direct consequence of you sexually abusing the victim. However, such behaviour can be reasonably expected from a child who was sexually abused at a very tender age who was not having the capacity to understand what is right and what is wrong, making that child susceptible to further sexual abuse.
11. Your counsel submits that in the case of *State v Spowart* [2013] FJHC 352; HAC89.2011 (24 July 2013), a sentence of 5 years imprisonment with a non-parole period of 4 years had been imposed on a 74 year old rape convict where the victim was a juvenile, suggesting that this court should take a similar approach. It is pertinent to note that the accused in that case had pleaded guilty to the charge. Where an accused pleads guilty as a true reflection of remorse and prevents the victim from having to recall his/her miserable experience, it may become a compelling reason for a sentencing court to impose a sentence below the applicable tariff.
12. In the case of *Spowart* (supra) the accused was sentenced to 5 years imprisonment for the offence of penile rape where the victim was 5 years old. In the case of *State v Singh* (HAC 288 of 2014; 01 August 2016) the accused who raped his 4 year old daughter by penetrating her mouth with his penis, received a sentence of 9 years and 6 months imprisonment whereas he would have been sentenced to an imprisonment term of 16 years if not for his early guilty plea and the other mitigating circumstances. The accused in the same case had a remaining period of 07 years 08 months and 23 days to

serve in view of the fact that he had already served 1 year 9 months and 7 days in custody in relation to the same offence.

13. Considering the aforementioned aggravating factors, I add 5 years imprisonment to the starting point. Now your sentence is 15 years imprisonment.
14. Considering your mitigating factors and the personal circumstances, I deduct 5 years of your sentence.
15. Accordingly, I sentence you to 10 years imprisonment. In terms of section 18 of the Sentencing and Penalties Decree 2009, I order that you are not eligible to be released on parole till you serve 06 years of that sentence.
16. You have spent only 02 days in remand. That was pending your sentence. Considering the fact that I have granted you a substantial discount in view of your mitigating factors and personal circumstances and the fact that the period in remand was only 02 days, I order that the said 02 days shall not be regarded as a period of imprisonment already served pursuant to the provisions of section 24 of the Sentencing and the Penalties Decree 2009.
17. In the result, you are sentenced to an imprisonment term of 10 years with a non-parole period of 06 years.
18. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera
JUDGE

Solicitors for the State: Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused: Rigsby Law, Suva.