

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 192 OF 2008

BETWEEN:

THE STATE

Applicant

AND:

A. V.

Accused

Counsel: Ms. P. Madanavosa for the State
Mr. T. Terere (Duty Solicitor) for the Accused

Date of Hearing & Sentence: Monday 2 February, 2009

SENTENCE

- [1] The Accused stands convicted of one count of rape. Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences.

- [2] In this case, the circumstances of the offending are serious. The victim was 4 years old when she was raped. The Accused was 34 years old and was in a position of trust. He was the victim's neighbour and the victim called him grandfather. The victim was lured into the Accused's house when she was playing outside and raped. Medical examination revealed abrasions and tenderness around the victim's vagina. Her hymen was not intact.
- [3] In mitigation, the Accused said he is 34 years old and is unemployed. He is in a defacto relationship. He has attained up to primary education. The Accused has 5 brothers and 2 sisters. His partner is depended on him. The Accused has no criminal history. He has been in remand since 27 August 2008 awaiting sentence. Although the Accused has exercised his right to a trial, I see from the court record that he only asked the complainant one question in cross examination.
- [4] The prosecution has tendered a victim impact statement. The author of the report is the complainant's grandmother. The Accused objects to the report on the ground that the report contains expert opinion evidence and that the author is not qualified to express such opinion. I agree and disregard the report from my consideration of the sentence.
- [4] The only mitigating factor is the Accused's previous good character. I give no weight to the fact that he is the sole bread winner in his family because when he committed the offence he was unemployed.
- [5] The aggravating features in this case are the tender age of the victim, the age gap between the victim and the Accused, and the breach of trust by the Accused.
- [6] The tariff for rape of a child is between 10 to 14 years imprisonment (*Mutch v State*, Cr. App. AAU0060/99, *Mani v State*, Cr. App. No. HAA0053/02L, *State v Saitava*, Cr. Case No. HAC10/07, *State v Marawa*, Cr. Case No. 016/03, *Drotini v State*, Cr. App. AAU001/05 and *State v Tony*, Cr. App. No. HAA003/08).

[7] Since this is a case of a single count of rape, I use 10 years as my starting point. I add 4 years for the aggravating factors and reduce 2 years for the mitigating factor and the time spent in remand.

[8] The Accused is sentenced to 12 years imprisonment. The Accused is advised he has a right of appeal to the Court of Appeal within 30 days.

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Daniel Goundar
JUDGE

At Suva
Monday 2 February, 2009

Solicitors:
Office of the Director of Public Prosecutions, Suva for the State
Legal Aid Commission, Govt. Buildings, Suva for the Accused