

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO: HAA 007 OF 2009

BETWEEN:

MATAIASI RALAWAKI

Appellant

AND:

THE STATE

Respondent

Counsel: Appellant in person
Ms V. Lidise for State

Date of Hearing: 30th July 2009
Date of Judgment: 10th September 2009

JUDGMENT

- [1] The appellant was convicted of rape of his seven year old step daughter on his plea of guilty and sentenced to 10 years imprisonment.
- [2] He appeals against conviction and sentence. At the hearing of the appeal, the appellant abandoned the appeal against conviction and pursued the

appeal against sentence alone. Since the appellant is unrepresented, I consider the appeal against conviction as well.

- [3] The appellant contends that his plea is equivocal because he was advised by police officers to plead guilty, that the learned Magistrate failed to explain the elements of the offence and that full disclosures were not served on him.
- [4] Further, the appellant contends that his sentence is harsh and excessive, that the learned Magistrate failed to consider his guilty plea and that the learned Magistrate failed to indicate the basis on which the sentence was imposed.
- [5] On 25 February 2008, the appellant appeared in the Magistrates' Court and elected to be tried in that Court. The learned Magistrate advised the appellant of his right to legal representation and ordered the prosecution to provide disclosures to the legal aid counsel so that the appellant could be advised by counsel.
- [6] On 26 February 2008, the appellant informed the learned Magistrate that he had been advised by the legal aid counsel and that he had received the disclosures. The case was then adjourned to allow the legal aid to assess the appellant's application.
- [7] On 18 August 2008, counsel for the legal aid advised the court that the appellant's application has been rejected. The appellant was arraigned on the charge and he pleaded guilty. The court record reads:

"Charge read and explained.
Election explained to accused.

Accused: Elects Magistrates' Court Trial.
I wish to plead guilty.

Court: Are you pleading guilty of your own free will.
Facts as per summary of facts.
Facts explained to the accused.
Accused admit the facts.
Tender Caution Interview and Medical Report of complainant
and birth certificate of complainant.
Accused is convicted as charged.
Previous Conviction admitted.
Previous Conviction is dated 14/10/80.
Previous Conviction is rendered irrelevant and will not be
considered for these proceedings.

Mitigation

I am 48 years old. I am married with 8 children. I work for
FSC in the Shipping Department. I earn sometimes \$80.00
and sometimes \$100.00. I reside at Navutu in Lautoka."

- [8] Before accepting the appellant's plea of guilty, the learned Magistrate ensured that he was not prejudiced by lack of legal representation. The learned Magistrate gave ample opportunity to the appellant to engage counsel. Plea was taken after legal aid refused the appellant's application. The charge was valid in law and the facts admitted by the appellant disclosed the charged offence.
- [9] I find the learned Magistrate conducted the proceedings with utmost fairness to the appellant and there is nothing in the record to support the

appellant's contentions that his plea was equivocal and that he was prejudiced by lack of legal representation.

[10] I reject the contention by the appellant that he pleaded guilty because he was advised by some police officers. There is nothing in the record to support the claim of the appellant. Nor is there any evidence before me of such pressure on the appellant to plead guilty by the police officers.

[11] I am satisfied that the plea of the appellant was freely and voluntarily made and that he was properly convicted.

[12] The learned Magistrate gave careful and detail reasons for the sentence imposed on the appellant.

[13] The learned Magistrate correctly identified the starting point of 10 years imprisonment for rape of a child (***Asesela Drotini v State Cr. App. No. AAU001 of 2005***). The learned Magistrate said:

"The complainant in this matter was 7 years old at the time you raped her. She was at an age where all young girls need love, care, understanding, nurturing and protection. What she could not get from her biological father as a result of a broken home, she expected from you, for after all you were the provider in the family not only for her, for her other siblings and also for her mother, who was by now your wife. You however used your authority and trust not to protect her but to violate her. You made her the target of your personal desires and gratification having no regard for the physical and mental trauma you no doubt caused her. I therefore pick as my starting point the term of 10 years imprisonment.

After violating her, you then kept her under siege with your threats for almost 2 years. You had no regard for whatever emotional and psychological effect that she may have from your mere presence in the home. This is reflected clearly by the fact that only when you left home after an argument with her mother was she able to complain about your offending to her. For that I increase the term by 2 years to 12 years imprisonment.

In considering your previous good character, your family circumstances, your genuine remorse, your cooperation with the police and your guilty plea I reduce the sentence by 2 years to that of 10 years imprisonment.

There is nothing more available apart from what I have considered to mitigate this offending. You will therefore serve a term of 10 years imprisonment."

- [14] I endorse the sentencing remarks of the learned Magistrate. This was indeed a dreadful offence committed on a vulnerable child of a very tender age. The appellant grossly breached the trust placed on him by the victim and her mother. The offence was further aggravated by the threats to the victim by the appellant to prevent her from complaining. The learned Magistrate was justified to take a serious view of the offence. After discounting for the aggravating and mitigating factors, the learned Magistrate imposed a sentence of 10 years imprisonment.
- [15] The sentence of 10 years imprisonment on the objective assessment of the facts in this case, is neither excessive nor wrong in principle.
- [16] The appeal against conviction and sentence is dismissed.

Daniel Goundar
JUDGE

At Lautoka
10th September 2009

Solicitors:

Appellant in person
Office of the DPP for State