

**IN THE FIJI COURT OF APPEAL**  
**[On Appeal from the High Court of Fiji]**

**Criminal Appeal No. AAU0021 of 2014**  
**[High Court Case No. HAC 319 of 2011]**

**BETWEEN** : **AISAKE NAULUMOSI** *Appellant*

**AND** : **THE STATE** *Respondent*

**Coram** : The Hon. Mr. Justice Daniel Goundar

**Counsel** : Mr. J. Savou for Appellant  
Mr. L.J. Burney for Respondent

**Date of Hearing** : 11 May 2016

**Date of Ruling** : 18 May 2016

**RULING**

[1] Following a trial in the High Court at Suva, the appellant was convicted of one count of rape and two counts of indecent assault. He was sentenced to a total term of 13 years' imprisonment with a non-parole period of 10 years. This is a timely application for leave to appeal both conviction and sentence.

[2] The grounds of appeal are as follows:

1. The Learned Trial Judge failed to take into account and warn himself in his Judgment on the danger of relying upon the inconsistent evidence given by the complainant as a result of the evidence as relayed by the complainant in court, to PW2 Savaira Sigalevu and the Doctor were different.
2. The Learned sentencing Judge erred in principle by double counting the aggravating features of the offending.

- [3] The complainant was the appellant's step-daughter. According to the complainant, the appellant had sexual intercourse with her in 2003 when she was 6 years old. The sexual abuse continued in the form of indecent assault over a period 8 years - 2005-2007 (count 2) and 2011 (count 3). She said she was too afraid to report the incidents. Eventually, in 2011, she told her school teacher (PW2) and the matter was reported to police. Medical examination revealed that the complainant's hymen was partially torn. At trial, the prosecution led evidence from the complainant, PW2 and a medical doctor.
- [4] The appellant's contention that the trial judge should have approached the complainant's evidence with caution is without merit. The complainant was of a very tender age when the sexual abuse commenced. When she gave evidence she was 16 years old. She gave evidence of being afraid to report the abuse. Eventually, she reported to her school teacher, which then led to a police report and a medical examination. The complainant was consistent with her report to her teacher and the doctor that she was sexually abused by the appellant. The inconsistencies, if any, only went to the particulars of the report (dates) and were peripheral. In my judgment, ground 1 is unarguable.
- [5] Ground 2 relates to the double counting of the aggravating factors in the sentence. The learned judge used two-tiered approach to sentence the appellant. The offence of rape was used as the head sentence. After identifying an appropriate range for rape, the learned judge picked 12 years as his starting point, added 3 years for the aggravating factors and reduced 2 years for the mitigating factors.
- [6] The learned judge considered the following as the aggravating factors:
- “1. The accused is the step father of the victim.
  2. The accused seriously disregarded and breached the trust between him and the victim.

3. Accused was 35 years old and victim was 6 years old at the time of first incident.
4. The accused took advantage of the trust that the victim had placed on him.
5. The accused completely disregarded of the clearly defined societal, religious and traditional rules that prohibits sexual relationship between a step father and a daughter.
6. The lack of remorse demonstrated by the accused person for what the victim has suffered emotionally, physically as reflected in the medical findings."

[7] The appellant's contention is that the breach of trust arose because he was the complainant's step-father, and therefore, the learned judge was wrong to consider factors 1-3 distinctively. In my judgment, although there is an arguable error in the methodology, the total sentence of 13 years' imprisonment for rape of a 6-year old child in a contested case reflects the criminality involved. I am not convinced the Full Court would impose a different sentence even if the arguable issue is upheld.

[8] For these reasons, leave is refused.

**Result**

Leave refused.



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The Hon. Mr. Justice Daniel Goundar  
**JUSTICE OF APPEAL**

**Solicitors:**

Office of the Legal Aid Commission for Appellant  
Office of the Director of Public Prosecutions for Respondent