

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 290 of 2017

[CRIMINAL JURISDICTION]

STATE

V

APENISA RAILEQE

Counsel : Ms. S. Serukai for State  
Ms. M. Ratidara for Accused

Hearing on : 26<sup>th</sup> to 28<sup>th</sup> March 2018

Summing up on : 28<sup>th</sup> March 2018

Judgment on : 28<sup>th</sup> March 2018

Sentenced on : 29<sup>th</sup> March 2018

(The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "LG".)

SENTENCE

1. Apenisa Raileqe, you stand convicted of the following offence;

*Statement of Offence*

**RAPE:** contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

*Particulars of Offence*


**APENISA RAILEQE**, between the 12<sup>th</sup> of August, 2017 and 27<sup>th</sup> of August, 2017 at Nadaro Village, in the Central Division, had carnal knowledge of LG, who is a child under the age of 13 years old.

2. At the time of offence the victim was 07 years old and you were 42 years old. You are the victim's father's elder brother where she calls you 'Ta levu'. You raped the victim by inserting your penis inside her vagina in her own house. As a result the victim had sustained injuries in her genitalia.
3. Being the victim's father's elder brother it was expected of you to be a protector of the victim. You on the other hand became her predator and exploited her when her parents were away. By your decision to renounce the basic moral values a human being of your standard is expected to possess, you have brought discredit to all the Tata Levus and in general to all adult males in our society. In fact, in this case, it is submitted in the victim impact statement that your conduct had led not only the victim but also her parents to lose the trust on the [male] family members.
4. Pursuant to section 207(1) of the Crimes Act 2009 ('Crimes Act') read with section 3(4) of the Sentencing and Penalties Act 2009 ('Sentencing and Penalties Act'), 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).
5. I consider the following as aggravating factors in this case;
  - a) There is a serious breach of trust;
  - b) The age gap between you and the victim which is 35years;
  - c) The victim sustained physical injuries as a result of your conduct; and
  - d) You exploited the victim's vulnerability.
6. The only mitigating factor available to you is the fact that you are a first offender.
7. I select 10 years imprisonment as the starting point of your sentence. Considering the above aggravating factors I would add 07 years to your

sentence and would deduct 2 years in view of the fact that you are a first offender.

8. Accordingly, I sentence you to a term of 15 years imprisonment. I order that you are not eligible to be released on parole until you serve 13 years of your sentence in terms of section 18(1) of the Sentencing and Penalties Act.
9. It was submitted that you were in custody since 19/09/2017. The period you have been held in custody shall be considered as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I hold that the period to be considered as served should be 07 months.
10. In the result, you are sentenced to an imprisonment term of 15 years with a non-parole period of 13 years. In view of the time spent in custody, time remaining to be served is as follows;  
Head Sentence - 14 years and 05 months  
Non-parole period - 12 years and 05 months
11. Having considered the facts of this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the victim 'LG' as the protected person. You are hereby ordered not to have any form of contact with the victim directly or by any other means, unless otherwise directed by this Court.
12. 30 days to appeal to the Court of Appeal.



  
Vincent S. Perera  
JUDGE

**Solicitors:**

**Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the Accused**