

**IN THE HIGH COURT OF FIJI AT SUVA**

**CASE NO: HAC. 112 of 2017**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**PENI BULAGO**

**Counsel** : Ms. S. Sharma for State  
Mr. F. Vosarogo for Accused

**Hearing on** : 22<sup>nd</sup> - 24<sup>th</sup> January 2018

**Summing up on** : 25<sup>th</sup> January 2018

**Judgment on** : 26<sup>th</sup> January 2018

**Sentence on** : 29<sup>th</sup> January 2018

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

**SENTENCE**

1. Peni Bulago, you stand convicted of one count of sexual assault under section 210(1)(a) of the Crimes Act 2009.
2. According to the evidence, you rubbed a banana on top of the victim's genitalia on one night in 2012. You are the victim's maternal grandfather. This incident took place when the victim was living in your house at Kalabu. Victim's parents were living at Lautoka. At the time of offence, the victim was below the age of 13 years.

3. The offence of sexual assault under section 210(1) of the Crimes Act carries a maximum sentence of 10 years imprisonment. Following the case of *State v Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012), this court has been applying an imprisonment term between 2 to 8 years as the tariff for sexual assault.
4. I take 2 years as the starting point of your sentence.
5. I consider the following as aggravating factors;
  - a) The victim was under your care and your protection when you sexually assaulted her. There is a serious breach of trust;
  - b) age difference between you and the victim is 52 years; and
  - c) you took advantage of the victims naivety and vulnerability.
6. According to the previous conviction report filed by the prosecution, you have 15 previous convictions and your last conviction was on 06/05/02 for the offence of indecent assault. Your good behaviour for almost 10 years before you committed the offence in this case will be considered as a mitigating factor. Your counsel submitted that you are genuinely remorseful.
7. Considering the aforementioned aggravating factors, I add 04 years to the starting point. Now your sentence is 06 years imprisonment.
8. I deduct 02 years of your sentence considering the aforementioned mitigating factors.
9. For committing the offence of sexual assault, I hereby sentence you for a term of 04 years imprisonment. I order that you are not eligible to be released on parole until you serve 03 years of that sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act 2009.
10. Section 24 of the Sentencing and the Penalties Act reads thus;

*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*

11. I note that you have spent around 05 months in custody for this matter. The period you were in custody shall be regarded as a period of imprisonment already served by you. I hold that the period to be considered as served should be 05 months.
12. In the result, you are sentenced to 04 years imprisonment with a non-parole period of 03 years. Considering the time spent in custody, the time remaining to be served is as follows;  
Head Sentence - 03 years, and 07 months  
Non-parole period - 02 years, and 07 months
13. Having considered the facts in this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the victim 'IT' 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.
14. 30 days to appeal to the Court of Appeal.



Vinsent S. Perera  
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitor for the Accused : Mamlakah Lawyers, Suva.