

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 40 of 2018

BETWEEN: **THE STATE**

AND: **ILAITIA VUSOLO**

Counsel: **Ms A Vavadakua for the State**
 Ms K Boseiwaqa (Duty Solicitor) for the Accused

Date of Hearing: **22 June 2018**
Date of Sentence: **25 June 2018**

SENTENCE

[1] Ilaitia Vusolo, you have freely and voluntarily pleaded guilty to a charge of rape after consulting duty solicitor from the Legal Aid Commission. Your plea is informed and competent. You are convicted as charged.

[2] The facts you admitted are as follows:

Between the 1st of November 2016 and the 30th day of November 2016, A.S, whose mother is the sister of the Accused person's wife, was spending her school holidays with her cousin, M the Accused person's step-daughter, at the Accused person's residence in Bua.

During the above time period, on one afternoon, the Accused confronted A.S in the kitchen and questioned her on whether she had a boyfriend or not and then he walked away.

Later in the evening after they had dinner, A.S and her cousin sister went to bed and were asleep when the Accused started waking A.S up. When he went to wake A.S, M, the step-daughter, was also aware that the Accused had awoken her cousin sister. The Accused

then told A.S that he was going to check her virginity. A.S was horrified when her uncle, the Accused told her to remove her underwear to do this.

A.S was afraid of the accused because she was in his home, and this was happening in the middle of the night, in addition it was the first time such an act was done to her, so out of fear for the Accused, as a person in authority over her that night, she submitted. The Accused did not request to check her, he told her he was going to check her and told her to lie down. He was reckless as to whether she was consenting or not.

A.S was scared of the Accused because he was her uncle and she was living in his house at that time since it was during the school holidays. Out of fear of his authority over her, as her uncle she submitted.

Accused then told her to remove her underwear. She obeyed out of fear for the Accused.

As A.S lay down, the Accused then switched on his Toshiba torch and he penetrated the vagina of A.S with his finger, without her consent.

A.S never told anyone when she returned to her home because she did not know how to talk about it and she was too embarrassed to even share with her own family. Additionally, she was fearful of the Accused since he was a very close family member and they would occasionally visit each other's families.

[3] In mitigation, your counsel informed the Court that you are 32 years old and married with five children. Your children are between the age of four and twelve. Your wife is expecting your sixth child. Your family is depended on you for their livelihood. You earn a living by farming. You are a first time offender.

[4] I consider the following as mitigating factors:

- (i) Early guilty plea and expression of genuine remorse which is consistent with your confession to the police.
- (ii) Your previous good character.

[5] The consequences of your offending on your family have little mitigating value. You should have thought of your wife and children before molesting a young girl who was your relative and under your care. However, the Court recommends the

Department of Social Welfare to attend to the welfare of your children while you are in prison.

- [6] The aggravating factors are:
- (i) Breach of trust. The victim was a child (16 years old) and your niece. You molested her when she came to spend her school holidays at your home.
 - (ii) The victim felt embarrassed after you sexually abused her. She did not speak to anyone about the incident because you were an older male relative and she feared you.
- [7] The maximum penalty for rape is life imprisonment. The tariff for child rape is 10-16 years imprisonment (*Raj v State* [2014] FJSC 12; CAV0003.2014 (20 August 2014)). The purpose of punishment for rape is to denounce the conduct and deter others.
- [8] Rape of a child is one of the most serious forms of sexual abuse. Children are vulnerable members of our society. They are entitled to live their lives free from any form of physical or emotional abuse. They are entitled to trust their family members to protect them and keep them safe from any form of abuse. When family members sexually abuse children, they should expect condign punishment to mark the society's outrage against sexual abuse of children.
- [9] If it was not for your early guilty plea, genuine expression of remorse and previous good character, I would have imposed a sentence of 13 years imprisonment. But for these compelling mitigating factors, I give you a discount of three years. You have not only saved court time and resources, you have relieved the child victim from giving evidence of a traumatic incident in her life by pleading guilty.
- [10] Finally, I have taken into account your remand period of 1 month and 2 weeks in determining the final term of your imprisonment.
- [11] You are sentenced to 10 years' imprisonment with a non-parole of 7 years.

[12] The offence you committed constitutes domestic violence under the Domestic Violence Act. You are issued with a permanent Domestic Violence Restraining Order (DVRO) with standard no contact and no molestation conditions. The DVRO is necessary to protect the victim in future from you. The DVRO will remain active until you are living. If you breach the DVRO, you may be charged with the offence of breaching a DVRO.



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Hon. Mr. Justice Daniel Goundar

Solicitors:

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

