

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 93 of 2016**

**STATE**

**V**

**MANUELI VUNIBOLA KOROIBETE**

**Counsel** : Mr. J. Niudamu for the State.  
: Ms. J. Singh [LAC] for the Accused.

**Dates of Hearing** : 06, 07, 08 May, 2019  
**Closing Speeches** : 08 May, 2019  
**Date of Summing Up** : 08 May, 2019  
**Date of Judgment** : 09 May, 2019  
**Date of Sentence** : 24 May, 2019

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**SENTENCE**

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*(The name of the victim is suppressed she will be referred to as "ST").*

1. In a judgment delivered on 9<sup>th</sup> May, 2019 this court found the accused guilty and convicted him for one count of rape as per the following information:

***Statement of Offence***

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

### ***Particulars of Offence***

**MANUELI VUNIBOLA KOROIBETE**, on the 5<sup>th</sup> day of June, 2015 at Nativi Village, Saivou, Ra in the Western Division, penetrated the vagina of ‘**ST**’ with his penis without the consent of the said ‘**ST**’.

2. The brief facts were as follows:

On 5<sup>th</sup> June, 2015 the victim was 16 years of age and a high school student. She was asked by her mother to get a bucket of clothes from the river in the village. At about 7 pm on her way to the river the victim went past the village hall kitchen at this time she noticed light inside the hall. She entered the hall to see which light was switched on and who was inside.

3. As the victim entered the hall the accused grabbed the victim’s hand and forcefully made her lie down. He forcefully removed her panty and then forcefully inserted his penis into her vagina and had sex for about 5 minutes. The accused stopped having sexual intercourse when some people came near the hall and at this time the accused ran away from the hall. The victim did not do anything since she was afraid of the accused. Thereafter the victim wore her panty and went home.

4. The victim did not consent to have sexual intercourse with the accused. The matter was later reported to the police by the School Chaplain.

5. Both counsel filed their written sentence and mitigation submissions for which this court is grateful.

6. The following personal details and mitigation have been presented by the counsel for the accused:

a) The accused was 21 years of age at the time of the offending;

- b) He is a first offender
- c) Educated up to form 5; and
- d) A labourer.

7. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

### **AGGRAVATING FEATURES**

8. The aggravating factors are:

a) Breach of Trust

The victim and the accused are from the same village and known to each other. The victim was alone, vulnerable and unsuspecting as a fellow villager the victim never expected the accused to do what he did. The accused breached the trust of the victim by his actions.

b) Age Difference

The victim was 16 years of age and the accused was 21 years at the time of the offending. Although the age difference is not substantial the accused ought to have acted responsibly and restrained himself from what he was doing.

c) Victim Impact Statement

According to the victim impact statement the victim has been emotionally and psychologically affected in the following manner:

- Post traumatic disorder including flashbacks, nightmares, severe anxiety, uncontrollable thoughts;

- Prolonged sadness, feeling of hopelessness, loss of interest in activities, fear, anger;
- Self-blame/guilt in allowing the crime to happen, did not want to go to school.

The accused is asking this court to give less weight to the victim impact statement without giving any reason.

9. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in the recent judgment of *Gordon Aitcheson vs. the State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has confirmed that the new tariff for the rape of a juvenile is now a sentence between 11 years to 20 years imprisonment.
10. It is the duty of the court to protect children from sexual abuse or exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty.
11. There has been an increase in sexual offences involving offenders who are known to the victim.
12. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely there is no two ways about it. Children are entitled to live their lives free from any form of physical or emotional abuse. When an accused sexually abuses a child, they should expect condign punishment to mark the society's outrage and denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.
13. The Supreme Court in *Mohammed Alfaaz v State [2018] FJSC 17; CAV0009.2018 (30 August 2018)* has stated the above in the following words at paragraph 54 that:

*“It is useful to refer to the observation expressed by the Fiji Court of Appeal in Matasavui v State; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118 wherein court said that “No society can afford to tolerate an innermost feeling among the people that offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity.”*

14. Madigan J in *State v Mario Tauvoli HAC 027 of 2011 (18 April, 2011)* said: .

*“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and courts are imposing those penalties in order to reflect society’s abhorrence for such crimes. Our nation’s children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”*

15. The Supreme Court in *Felix Ram v State [2015] FJSC 26; CAV12.2015 (23 October 2015)* mentioned a long list of factors that should be considered in punishing the offenders of child rape cases. Those factors would include:

- (a) *whether the crime had been planned, or whether it was incidental or opportunistic;*
- (b) *whether there had been a breach of trust;*
- (c) *whether committed alone;*
- (d) *whether alcohol or drugs had been used to condition the victim;*
- (e) *whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;*
- (f) *whether the impact on the victim had been severe, traumatic, or continuing;*



- (g) *whether actual violence had been inflicted;*
- (h) *whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*
- (i) *whether the method of penetration was dangerous or especially abhorrent;*
- (j) *whether there had been a forced entry to a residence where the victim was present;*
- (k) *whether the incident was sustained over a long period such as several hours;*
- (l) *whether the incident had been especially degrading or humiliating;*
- (m) *If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*
- (n) *Time spent in custody on remand.*
- (o) *Extent of remorse and an evaluation of its genuineness;*
- (p) *If other counts or if serving another sentence, totality of appropriate sentence.*

16. After assessing the objective seriousness of the offence committed I take 12 years imprisonment (lower range of the scale) as the starting point of the sentence. I add 4 years for the aggravating factors arriving at an interim total of 16 years imprisonment. The personal circumstances and family background of the accused has little mitigatory value, however, his good character being a first offender has substantive mitigating value. The sentence is reduced by 1 year to reflect good character and mitigation. The sentence now is 15 years imprisonment.

17. I note from the court file the accused was remanded for 15 days in accordance with section 24 of the Sentencing and Penalties Act the remand

period is deducted as a period of imprisonment already served. The final sentence is 14 years 11 months and 15 days imprisonment.

18. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim of 16 years of age compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
19. Under section 18 (1) of the Sentencing and Penalties Act, I impose 13 years imprisonment as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and to meet community expectations which is just in the circumstances of this case.
20. In summary I pass a sentence of 14 years 11 months and 15 days imprisonment with a non-parole period of 13 years to be served before the accused is eligible for parole.
21. 30 days to appeal to the Court of Appeal.

  
**Sunil Sharma**  
**Judge**  


**At Lautoka**  
24 May, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**