

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

CRIMINAL CASE NO.: HAC 14 OF 2019

BETWEEN : STATE

AND : ANASA LULU VATEITEI

Counsel : Ms A. Vavadakua for the State
Ms S. Devi and Ms M. Besetimoala for the Accused

Dates of Hearing : 22 - 23 June 2020

Date of Summing Up: 24 June 2020

Date of Judgment: 24 June 2020

Date of Sentence: 7 July 2020

SENTENCE

- [1] The offender was found guilty of rape of a mentally impaired woman after trial. The incident occurred on 10 February 2019 at Bucalevu, Taveuni.
- [2] The victim is 27 years of age. She was born with cognitive disability. She has poor intellectual functioning and judgment. She is unable to engage in logical conversation. She has always been under the care of her mother. She has an older sister with a similar disability living with her.
- [3] The offender is 34 years old and is the cousin of the victim. He is a single man and lived close to the victim's home. He was a regular visitor to her home. He knew the victim was suffering from mental disability.
- [4] On the day of the incident, the offender after consuming kava went to the victim's home to eat. When he entered the house he saw the victim and her sister alone at home. Their mother had gone out that day. The offender had sexual intercourse with the victim in the presence of her sibling. After having sex, he left the house.

- [5] At trial, the offender claimed he had consensual sexual intercourse with the victim. That claim was rejected by the court. The court found that the victim did not have the mental capacity to consent to sexual intercourse and that the offender knew the victim did not have the necessary capacity to engage in sexual act.
- [6] This is a case of sexual exploitation of a vulnerable victim with mental disability. The offender also breached the trust of the victim and her mother. The incident occurred in the plain view of another mentally impaired person. I consider these as aggravating factors.
- [7] The offender has previous good character. That is the only mitigating factor. Otherwise, the offender has expressed little remorse for his action.
- [8] The maximum sentence prescribed for rape is life imprisonment. The tariff is from 7-15 years imprisonment (*Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26 April 2018)).
- [9] A comparable case is *State v Bhurrah* [2018] FJHC 133; HAC27.2016 (2 March 2018). In that case the court imposed a sentence of 12 years imprisonment (in addition to 6 months remand period) on an offender who raped and sexually assaulted a 70-year old female relative suffering from mental disability.
- [10] I identify denunciation and deterrence as the main purposes of sentence applicable to the offender.
- [11] A downward adjustment is made to sentence to reflect the two months the offender spent in custody on remand.
- [12] The offender is sentenced to 12 years' imprisonment with a non-parole period of 8 years.


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Hon. Mr Justice Daniel Goundar


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