

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

**CRIMINAL CASE NO.: HAC 62 OF 2019**

STATE

V

MALELI KOROIVALU

**Counsel** : Ms. K. Semisi for State  
: Mr. I. Romanu for Defence

**Date of Judgment** : 14 August 2020  
**Date of Sentence** : 19 August 2020

(Name of the Complainant is suppressed)

**SENTENCE**

1. Mr. Maleli Koroivalu, you were convicted after a full defended trial of one count of Rape and one count of Sexual Assault. The relevant parts of the information reads as follows:

**COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

MALELI KOROIVALU on the 9<sup>th</sup> day of February 2019 at Laucala Beach Estate in the Central Division had carnal knowledge of MB without her consent.

**COUNT 2**

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210(1) (a) of the Crimes Act 2009.

### *Particulars of Offence*

MALELI KOROIVALU on the 9<sup>th</sup> day of February 2019 at Laucala Beach Estate in the Central Division unlawfully and indecently assaulted MB by pressing her breasts.

2. You now come before this court for sentence.
3. The facts of the case are that the victim was 15 years of age at the time of the offence. She is now 17 years old. She is from a broken family and was brought up by her aunt. After moving from one friend to another, she finally decides to stay with her in a room which her sister had just rented out from your house. When her sister had gone for her night shift, you entered her room. You pushed her to the mattress and forced her to take off her clothes. You pulled down her pants and the undergarment and pressed her naked breast without her consent. You then forcefully inserted your penis into her vagina. You disregarded her complaint that her vagina was painful and you kept on inserting your penis into her vagina. The doctor who medically examined the victim found her hymen not to be intact.
4. In sentencing offenders, the Courts must have regard to the proportionality principle in sentencing and Section 4 of the Sentencing and Penalties Act 2009 (SPA). The SPA requires the courts to have regard to the maximum penalty prescribed, the current sentencing practice and the applicable guidelines issued by the courts.
5. The convictions are based on the same facts. Therefore, this is a fit case to impose an aggregate sentence in terms of Section 17 of the Sentencing and Penalties Act. Accordingly, I would impose an aggregate sentence for the two counts you are convicted of.
6. The maximum penalty for Rape is imprisonment for life. The sentencing tariff for child rape has been increased by the Supreme Court. The tariff ranges from 11 years to 20 years imprisonment [*Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018)].
7. The maximum penalty for Sexual Assault is 10 years' imprisonment. The tariff for the offence of Sexual Assault ranges from 2 to 8 years' imprisonment, the top end being reserved for serious sexual assaults [*State v Epeli Ratabacaca Laca*, HAC 252 of 2011].

8. In selecting the starting point, the courts must have regard to the seriousness of the offending and the impact or harm caused to the victim. After selecting an appropriate starting point, I will consider the aggravating and mitigating features to arrive at a sentence that is proportionate, just and reasonable in the circumstances of this case.

9. Aggravating Features

- a. The victim and her sister trusted you as an elderly landlord. You breached that trust.
- b. You knew that the victim was alone in the room when you committed these offences. You exploited her vulnerability.
- c. There is a huge age gap between you and the victim. You are a fatherly figure to the victim.
- d. The Medical Report notes the physical harm received by the victim as a result of this attack. The mental, and emotional suffering (psychological harm) caused to the victim is evident as per her Victim Impact Statement.

10. Mitigating Features

Your counsel submitted the following mitigating features.

- a. You are 49 years old and a father of 8 children.
  - b. You are actively engaged in social and community service.
  - c. Although you have one active previous conviction it is not of sexual nature.
  - d. You seek mercy and forgiveness of this court.
11. You have been in remand for approximately 3 months. I have taken the remand period into consideration in deciding your sentence.

12. You have committed serious offences. The culpability level is high in this case. The harm caused to the victim is irreparable. Having considered the gravity of the offence and the harm caused to the victim, I pick a starting point of 11 years from the bottom of the tariff for rape.
13. I increase your aggregate sentence by 2 years to reflect the aggravating features of the offences you have committed. I give a discount of 12 months to reflect the remand period and the mitigating features to arrive at an aggregate sentence of 12 years' imprisonment.
14. The children are vulnerable segment of our society. The United Nations Convention on Rights of the Child and the Constitution require the courts to protect children. The children are entitled to live their lives free from any form of physical, sexual or emotional abuse. The courts in Fiji, at all levels, have repeatedly pronounced that the child rapists must severely be dealt with. Offenders should expect condign punishment to mark the society's outrage and denunciation against sexual abuse of children. The courts have also emphasized that the increasing prevalence of such offending in the community calls for deterrent sentences.
15. Mr. Maleli Koroivalu, you are sentenced to an aggregate sentence of 12 years' imprisonment with a non-parole period of 9 years.
16. 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge

Judge

At Suva

19 August 2020

Counsel:

- Office of the Director of Public Prosecution for State
- MIQ Lawyers for Defence

