

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

**Criminal Case No.: HAC 111 of 2017**

**STATE**

**V**

**NACANIELI RAIDA CAGIMAICAMA**

**Counsel** : Mr. T. Tuenuku for the State.  
: Ms. A. Bilivalu for the Accused.

**Dates of Hearing** : 12, 13 and 14 August, 2020  
**Closing Speeches** : 17 August, 2020  
**Date of Judgment** : 20 August, 2020  
**Date of Sentence** : 04 September, 2020

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**SENTENCE**

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

1. In a judgment delivered on 20 August, 2020 this court found the accused guilty and convicted him for one count of sexual assault and one count of rape as per the following information.

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**NACANIELI RAIDA CAGIMAICAMA**, between the 01<sup>st</sup> day of January, 2016 and the 31<sup>st</sup> day of December, 2016 at Vatudua Settlement, Rakiraki, Ra in the Western Division, unlawfully and indecently assaulted “**UT**”, by licking her vagina.

**SECOND COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**NACANIELI RAIDA CAGIMAICAMA**, between the 01<sup>st</sup> day of April, 2017 and the 30<sup>th</sup> day of April, 2017 at Vatudua Settlement, Rakiraki, Ra in the Western Division, penetrated the vagina of “**UT**”, with his penis, without the consent of the said “**UT**”.

2. The brief facts were as follows:

The accused is the stepfather of the victim, in the year 2016 the victim who was 17 years of age at the time was living at Nakorokula, Rakiraki with the accused, her mother and her two siblings.

3. On 29<sup>th</sup> May, 2016 after the victim’s mother had left for work the accused told the victim and her siblings not to go to school. The accused sent both the victim’s siblings to get water from the village which was about 15 minutes walk from her home.

4. The victim was inside the house, the accused came and forcefully started removing the victim’s clothes, as she tried to stop him she got pushed on the floor lying face up on her back.

5. When the victim was on the floor the accused with one hand started removing her singlet and skirt and with the other hand he held her on the floor. The victim tried to push the accused away but she could not.

The accused was able to remove both her clothes, after this, the accused forcefully sucked her breast and then licked her vagina for about 5 minutes.

6. The accused threatened her not to tell anyone otherwise he will use a knife on her or her mum. The victim did not consent to what the accused had done to her.
7. After this incident, on one occasion in April, 2017 the victim's mother went to work, the victim and her siblings were getting ready to go to school, as the victim was about to leave the house with her bag the accused scolded her and told her to open her bag. When the accused saw her clothes he took the school bag and burnt it outside the house and told the victim not to go to school and stay at home.
8. The victim went in the house crying and sat in the sitting room the accused came and closed the door. At this time, the accused asked the victim if she wanted to go to school when she said "yes" the accused told her to have sex with him before going to school.
9. The victim pushed the accused and she saw some cane knives in the sitting room where she used to sleep. The accused forced her to lie down by pushing her with his hands he then came on top of her removed his clothes and then removed her clothes.
10. The victim was facing up so the accused pressed her breast, licked her vagina and then forcefully penetrated his penis into her vagina, it was painful she tried to push him but could not. There was a cane knife beside the accused he threatened the victim by saying that he will cut her neck if she moved. The accused had sex with the victim for about 5 minutes.

11. After a few days, the victim's mother was going to her village and the victim went with her. At her mother's village she told her aunt Meiva Loga about what the accused had done to her she was taken to the Dobuilevu Police Post to report the incidents. The accused was arrested, caution interviewed and charged.
12. Both Counsel filed sentence submissions including the victim impact statement and mitigation for which this court is grateful.
13. The counsel for the accused provided the following personal details and mitigation on behalf of the accused.
  - a) The accused is 64 years of age;
  - b) First offender;
  - c) Married with three children;
  - d) Sole breadwinner;
  - e) Bee and Honey Farm Serviceman;
  - f) Cooperated with the police;
  - g) Promises not to reoffend, willing to reform himself.
14. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs. the State, CAV 0003 of 2014* that the personal circumstances and family background of an accused person has little mitigatory value in cases of sexual nature.

#### **AGGRAVATING FACTORS**

15. The following aggravating factors are obvious:
  - a) Breach of Trust  
The victim is the step daughter of the accused who was living in his house. She trusted the accused and did not expect what he had done

to her. The accused grossly breached the trust of the victim by his actions.

b) Victim was alone and vulnerable

The accused had sent the siblings of the victim to get water from the village and the mother of the victim was at work. The victim was alone and vulnerable who was over powered by the accused on both the occasions.

c) Planning

There is some degree of planning by the accused. He knew the victim's mother was at work and he had sent the two siblings of the victim to get water from the village so that he would be alone with the victim.

d) Victim Impact Statement

In the victim impact statement the victim states that as a result of what the accused had done to her she was unable to concentrate in her school work and she was unable to complete her High School studies. The victim continues to get nightmares and she is still scared of the accused. After the incidents were reported the accused family started disliking the victim, she does not feel safe at home and has lost trust in everyone.

e) Age difference

The victim was 17 years of age whereas the accused was 60 years at the time of the offending. The age difference is substantial.

f) Incidents happened at home

The victim was sexually abused at her home, a place where she is supposed to be safe.

16. The maximum penalty for the offence of rape is life imprisonment. The Supreme Court of Fiji in *Gordon Aitcheson vs. The State*, has

confirmed the new tariff for the rape of a juvenile to be a sentence between 11 years to 20 years imprisonment.

17. There has been an increase in sexual offences involving offenders who are known to the victim and are mature adults. It is shocking to note the manner in which the accused had committed these offences on the victim.
18. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely. Children are entitled to live their lives free from any form of physical or emotional abuse. When family members sexually abuse children, violating the Domestic Violence Act, they should not expect any mercy from this court. The punishment ought to be such that it takes into account the society's outrage and denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.
19. 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 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."*

20. 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."*

21. 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.*

22. The two offences for which the accused has been found guilty and convicted are offences founded on the same facts and are of similar character, I therefore prefer to impose an aggregate sentence for the two offences in accordance with section 17 of the Sentencing and Penalties Act.
23. After assessing the objective seriousness of the offences committed I take 13 years imprisonment (lower range of the scale) as the starting point of the sentence. I add 6 years for the aggravating factors, bringing an interim total of 19 years imprisonment. The personal circumstances and family background of the accused has little mitigatory value. However, I note that the accused has no previous convictions he comes to court as a person of good character. For mitigation and good character the sentence is reduced by 1 year. The aggregate sentence is now 18 years imprisonment.
24. I note from the court file that the accused was remanded for 2 months and 12 days, in accordance with section 24 of the Sentencing and Penalties Act the sentence is reduced by 3 months as a period of imprisonment already served. The final aggregate sentence is 17 years 9 months imprisonment.
25. Mr. Cagimaicama you have committed serious offences against your step daughter who you were supposed to protect and care. The victim was unsuspecting and vulnerable you cannot be forgiven for what you have done to the victim. You were a person in authority since the victim was living in your house but you had no mercy for her, you never gave a second thought about what you were doing to this innocent child. As a mature adult you should have known better but you took advantage of this child's vulnerability. You were undeterred in achieving your lust for sexual gratification.



26. The victim has also been psychologically and emotionally affected, rape is not only a physical act, it destroys the very soul of the victim, and also brings about a sense of hopelessness and anxiety. You have scarred the life of this victim forever. There is no doubt that positive and happy childhood memories contribute towards child development which is an inspiration for the future. Unfortunately, this is not so for the victim.
27. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was the accused's step daughter aged 17 years compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
28. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.
29. Considering the above, I impose 15 years 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 also meet the expectations of the community which is just in the circumstances of this case.
30. In summary, I pass an aggregate sentence of 17 years 9 months imprisonment with a non-parole period of 15 years to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.

31. 30 days to appeal to the Court of Appeal.

  
**Sunil Sharma**  
**Judge**



The seal of the High Court of Lautoka is circular, featuring a central emblem with a shield and a crown, surrounded by the text "HIGH COURT OF LAUTOKA" and "LAUTOKA".

**At Lautoka**  
04 September, 2020

**Solicitors**

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

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