

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 367 of 2019

STATE

V

AMENATAVE BOLA

Counsel : Ms. Unaisi Tamanikaiyaroi for the State  
Ms. Lice Manulevu for the Accused

Sentence Hearing : 18 August 2020

Sentence : 14 September 2020

### SENTENCE

- [1] Amenatave Bola, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged, with the following offence:

#### *Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

#### *Particulars of Offence*

**AMENATAVE BOLA**, between the 24<sup>th</sup> day of November and the 31<sup>st</sup> day of December 2018, at Koro, in the Eastern Division, had carnal knowledge of **SALESA LIKUCAGIBULA**, a child under the age of 13 years.

- [2] This matter was first called before the High Court on 14 November 2019. On 22 January 2020, the DPP filed the Disclosures relevant to the case. The Information was filed by the State on 12 February 2020, and the matter was adjourned to 25 February 2020 for plea.
- [3] On the said day you pleaded guilty to the one count in the Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your plea.

- [4] On 18 June 2020, the Summary of Facts were filed in Court. On the same day, the said Summary of Facts were read out and explained to you. You understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the count of Rape in the Information, and found the said count proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the count of Rape as charged.
- [5] I now proceed to pass sentence on you.
- [6] The Summary of Facts filed by the State was as follows:
- "1. The complainant is Salesi Likunicagibula ("the complainant"), 11 years old in 2019 (DOB: 01/07/08), class 6 student of Kade Village, Koro, Lomaiviti. The accused namely Amenatave Bola is also known to the complainant as "Tukai Bola", 69 years old in 2019 (DOB: 25/03/51), I-taukei, Farmer of Kade village, Koro, Lomaiviti.*
  - 2. There is a domestic relationship namely the accused is the grandfather or granduncle of the complainant. The complainant stated that sometime between 24<sup>th</sup> November to 31<sup>st</sup> December 2018, at Kade Village, Koro Island, she was sent by a relative to go and bring his torch from another house.*
  - 3. When the complainant reached the room she saw the accused sitting inside the room with the lights off, the complainant asked for her relative's bag and the accused pointed towards the place it was located. The complainant entered the room and got the torch, at the same time the accused removed his clothes and inserted his penis into the complainant's vagina, after sometime he then told her to take the torch and to go home.*
  - 4. The accused was interviewed by police on 29<sup>th</sup> October 2019 and upon having the allegations put to him he admitted having sexual intercourse with the complainant by inserting his penis into her vagina (Q & A 48, 53, 60, 65, 67). A copy of the Caution Interview of the accused is attached."*
- [7] Amenatave, you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [8] The complainant's date of birth is 1 July 2008. Therefore, at the time you committed this offence, the complainant was merely 11 years of age. As such, the complainant was a juvenile at the time you committed this offence on her.
- [9] The Victim Impact Statement of the complainant has been filed in Court. Therein, it is recorded that the complainant has been emotionally and psychologically traumatized by your actions. The impact of your actions on the complainant is said to be continuing, as detailed in the said Victim Impact Statement.
- [10] In the Victim Impact Statement the complainant has said as follows: *"I wish to tell you Tukai (Grandpa) Mena that what you did to me will not be erased from my mind. You stole my*

*childhood. You took away from me what was very precious in my life. I used to refer to you as my grandfather, but you didn't think of me.*

*I did not ever like or consent to what you did to me."*

- [11] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

*4. — (1) The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

- [12] I have duly considered the above factors in determining the sentence to be imposed on he accused.

- [13] The offence of Rape in terms of Section 207(1) of the Crimes Act carries a maximum penalty of imprisonment for life.

- [14] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

*"...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage."*

- [15] In the case of **State v. Marawa** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

*"Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences".*

*"A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public's disapproval and serves as a warning to others who may hitherto regard such acts lightly. One must not ignore the validity of the imposition of condign punishment for serious crime. Lastly the sentence is set in order to protect women from such crimes: **Roberts and Roberts** (1982) 4 Cr. App R(S) 8; **The State v Lasaro Turagabeci and Others** (unreported) Suva High Court Crim. Case No. HAC0008.1996S."*

[16] In **The State v Lasaro Turagabeci and Others** (supra) Pain J had said:

*"The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences."*

[17] His Lordship Justice Daniel Goundar, in the case of **State v. AV** [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

*"...Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences"*.

[18] In the case of **State v. Tauvoli** [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

*"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 the 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."*

[19] In the case of **Felix Ram v. The State** [2015] FJSC 26; CAV 12 of 2015 (23 October 2015); His Lordship Chief Justice Anthony Gates laid down the following factors that a Court should take into account when sentencing an offender who has been convicted of Rape:

*"(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."

[20] Furthermore, His Lordship Justice Goundar in **State v Apisai Takalaibau** – Sentence [2018] FJHC 505; HAC 154 of 2018 (15 June 2018); making reference to statistics of Aggravated Burglary cases filed in the High Court in 2017 and 2018, stated that "A factor that influences sentencing is the prevalence of the offence in the community.....The more prevalent is an offence, the greater the need is for deterrence and protection of the community."

[21] This has also been affirmed by the Supreme Court in **Alfaaz v. State** [2018] FJSC 17; CAV0009.2018 (30 August 2018); where it was recognized that the prevalence of cases of child rape calls for harsher punishments to be imposed by Courts. Their Lordships held:

*"According to the statistics released by the Director of Public Prosecutions Office it appears that a number of rape victims as well as victims under the age of 18 years and victims in domestic relationships or relatives were also victims of other serious sexual offences. The rape of children is a very serious offence and it is very frequent and prevalent in Fiji. The courts must impose harsh penalties dictated by the legislation. The courts should not leniently look at this kind of serious cases of rape of children of tender years when punishing the offenders."*

[22] In the case of **Anand Abhay Raj v. The State** [2014] FJSC 12; CAV 0003 of 2014 (20 August 2014); Chief Justice Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.

[23] However, in the case of **Aitcheson v State** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); His Lordship Chief Justice Gates stated that the sentencing tariff for the Rape of a juvenile should now be increased to between 11 and 20 years imprisonment. His Lordship held:

*"The tariff previously set in **Raj v The State** [2014] FJSC 12 CAV0003, 2014 (20<sup>th</sup> August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms."*

[24] In **Aitcheson v State** (*Supra*), it was said:

*[72] Undoubtedly it has been accepted by the society that rape is the most serious sexual offence that could be committed on a woman. Further it is said that; "A murderer destroys the physical body of his victim; a rapist degrades the very soul of a helpless female."*

[25] In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v. State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."*

[26] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 11 years imprisonment for the count of Rape.

[27] The aggravating factors are as follows:

- (i) You were the complainant's grandfather or granduncle. The complainant referred to you as Tukai Bola or Tukai Mena. As such, you should have protected and safeguarded the complainant. Instead you breached the trust expected from you and the breach was gross.

- (ii) There was a large disparity in age between you and the complainant. At the time of the incident the complainant was merely 11 years of age. At the time you were 67 years of age. Therefore, you were 56 years older than the complainant.
- (iii) You took advantage of the complainant's vulnerability, helplessness and naivety.
- (iv) You have exposed the innocent mind of a child to sexual activity at such a tender age, and thereby robbed the complainant of her innocence.
- (v) The impact of the crime on the complainant was traumatic and is said to be continuing.

**[28]** In mitigation you have submitted as follows:

- (i) You are a person of recent good character. Even the State confirms the fact that you have not offended the law since the year 2000 (prior to committing the act that you are now charged with).
- (ii) I note that you have fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) You have submitted that you are truly remorseful of your actions and that you are seeking forgiveness from this Court.
- (iv) That you entered a guilty plea at the earliest opportunity during these proceedings.

**[29]** Amenatave, you are now 69 years of age (Your date of birth being 25 March 1951). You are said to be married and having a 10 year old daughter. You are said to have studied up to secondary school. Prior to being remanded for this case you were working as a farmer earning approximately \$50.00 per week. However, in my opinion, these are all personal circumstances and cannot be considered as mitigating factors.

**[30]** Amenatave, considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence would be 16 years' imprisonment.

**[31]** I accept that you are a person of recent good character and that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering the above mitigating factors, I deduct 3 years from your sentence. Now your sentence would be 13 years' imprisonment.

**[32]** I accept that you entered a guilty plea at the earliest opportunity during the course of these proceedings. In doing so you saved valuable time and resources of this Court, instead of proceeding with the matter for trial. For your early guilty plea I grant you a further discount of 3 years. Now your sentence would be 10 years' imprisonment.

[33] The next issue for consideration is whether this Court should grant you any concessions due to your advanced age.

[34] Her Ladyship Madam Justice Nazhat Shameem in the case of *Rokota v. The State* [2002] FJHC 168; HAA 68 J of 20025 (23 August 2002) held as follows:

*"...However, the Appellant is 64 years old. There are special sentencing principles for the sentencing of the elderly, particularly those of previous good character."*

[35] Making reference to Principles of Sentencing (2<sup>nd</sup> Edition), by D. A. Thomas, Her Ladyship said:

*"Recognition of age as a mitigating factor does not mean that imprisonment should never be imposed on elderly offenders, and the Court has upheld sentences of imprisonment on men in their seventies. It is however a long-established principle that a sentence should normally be shortened so as to avoid the possibility that the offender will not live to be released."*

[36] However, considering all the facts and circumstances of this case, especially the fact that the complainant herself was merely 11 years of age at the time of the incident, I am not inclined to reduce the primary sentence or head sentence I am imposing on you.

[37] Accordingly, I sentence you to a term of 10 years' imprisonment.

[38] However, in determining the non-parole period to be imposed on you, I have given due consideration to your advanced age. Accordingly, pursuant to the provisions of Section 18 of the Sentencing and Penalties I fix your non-parole period as 6 years' imprisonment.

[39] Section 24 of the Sentencing and Penalties Act reads thus:

*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*

[40] You have been in remand custody from 29 October 2019, the day on which you were taken into custody for this case. Accordingly, you have been in custody for a total period of nearly 11 months. The period you have been in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 11 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[41] In the result, your final sentence is as follows:

Head Sentence - 10 years' imprisonment.

Non-parole period - 6 years' imprisonment.

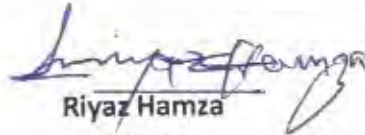
Considering the time you have spent in remand, the time remaining to be served by you is as follows:



- Head Sentence - 9 years' and 1 month imprisonment.  
Non-parole period - 5 years' and 1 month imprisonment.

[42] You have 30 days to appeal to the Court of Appeal if you so wish.



  
Riyaz Hamza  
JUDGE  
HIGH COURT OF FIJI

AT SUVA

Dated this 14<sup>th</sup> Day of September 2020

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