

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 110 OF 2017

BETWEEN : **STATE**

AND : **MESULAME LESAVUA**

Counsel : **Ms. P. Lata for the State**
Ms. L. Volau for the Accused

Hearing on : **20th - 22nd of July 2020**

Summing up on : **29th of July 2020**

Judgment on : **07th of August 2020**

Sentence on : **13th of October 2020**

(The name of the victim is suppressed and will be referred to as VV, PW1 or the complainant.)

SENTENCE

1. Mr. Mesulame Lesavua, you have been found guilty and convicted of ;

Two counts of 'Indecently Insulting or Annoying any Person' contrary to section 213 of the crimes Act,

Two counts of Rape contrary to section 207 (1) and 2 (c) of the Crimes Act,
A count of Sexual Assault contrary to section 210 (1) (a) of the Crimes Act;
and,
A count of Attempted Rape contrary to section 208 of the Crimes Act.

2. You pleaded not guilty to the charges and the ensuing trial lasted for 3 days. The complainant VV, Mr. Vilisimani Rakikau and Ms. Rajieli Naiveno gave evidence for the prosecution, while you gave evidence for your-self. The three assessors unanimously found the accused not guilty to the alleged first two counts of Indecent Assault, but found him guilty for two lesser alternative counts of 'Indecently Insulting or Annoying any Person' set out in section 213 of the Crimes Act, 2 counts of Rape, the count of Sexual Assault and the count of Attempted Rape. This court having reviewed the evidence, conquered with the opinion of the Assessors, found you guilty and convicted you of the above said counts.
3. It was proved during the trial that, being an uncle of VV how you abused and raped him over a period of about 6 months in time when he was about 14 years of age. Then you were said to be 28 years old twice the age of the VV.
4. The offences you have committed form a series of offences of a similar character. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar

character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

5. Section 4 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. I have duly considered these factors in determining the aggregate sentence to be imposed on you.
6. The offence of Rape carries in terms of Section 207(1) of the Crimes Act No. 44 of 2009, a maximum penalty of imprisonment for life.
7. 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.”

8. 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”.

9. In the **State v Lasaro Turagabeci and Others** [1996] FJHC 173; HAC0008.1996S (27 November 1996) 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.”

10. Though the State and the Defence, both submit that the tariff set for rape of a child is 11 to 20 years of imprisonment as for **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018), I do not see that this falls within the said category. The victim was just above the age of 13 years and the appropriate tariff as approved by the case of **Raj v State** [2014] FJSC 12; CAV0003.2014 (20 August 2014) is 10 to 16 years of imprisonment.
11. In consideration of the fact that this is an aggregate sentence, as well as the above tariff, I will commence your sentence at 12 years of imprisonment.
12. The aggravating factors are as follows:
- (i) This was a serious and abhorrent series of crime.
 - (ii) There was gross abuse and breach of trust.
 - (iii) The accused was victim’s uncle.

(iv) The impact of the crime on the victim was traumatic.

13. Considering the aforementioned aggravating factors, I enhance your aggregate sentence by further 2 years. Now your aggregate sentence is 14 years of imprisonment.
14. Your counsel has indicated that you have no previous convictions or any pending cases and has maintained a clean character. However the state submits that you have been convicted once before in 2006 for being Drunk and Incapable. Therefore, I cannot consider you as a first time offender.
15. In considering that that you have been of good behavior for about 10 years until you committed this and the rest of the mitigating factors submitted on your behalf I deduct two years from the above.
16. Accordingly, I sentence you to a term of imprisonment of 12 years. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, and having duly considered all the relevant factors, I order that you are not eligible to be released on parole until you serve 9 years of that sentence.
17. 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.”

18. You were arrested on the 28th of May 2017. You were in remand till granted bail on the 05th of July 2017. Thereafter, you were convicted by this court on the 07th of August 2020 and is in remand since then. Altogether, you have been in custody for a period of little more than 3 months and 3 weeks. I will deduct 4 months in lieu of that as the period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 4 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

19. In result, you are sentenced to a term of imprisonment of 12 years with a non-parole period of 09 years. Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence	-	11 years and 08 months.
Non-parole period	-	08 years and 08 months.

20. You have 30 days to appeal to the Court of Appeal if you desire so.




Chamath S. Morais

JUDGE

At Lautoka

13th October 2020

Solicitors for the State : Office of the Director of Public Prosecutions.

Solicitors for the Accused : Legal Aid Commission, Lautoka.