

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

**CRIMINAL CASE NO. 039 OF 2019**

**BETWEEN** : STATE

**AND** : WAISAKE TULAVU

**Counsel** : Ms S Shameem & Ms U Tamanikaiyaroi for the State  
Ms S Daunivesi & Ms T Kean & Mr E Sau for the Accused

**Date of Hearing** : 5 October – 9 October 2020

**Date of Summing Up:** 13 October 2020

**Date of Judgement** : 13 October 2020

**Date of Sentence** : 24 October 2020

**SENTENCE**

- [1] Following a trial, the offender was found guilty of four counts of rape and one count of sexual assault. The offences were committed against three women who came in contact with the offender through a church called Agape Healing Ministry. The offender was the head pastor of this church. The offender used his residence at Cunningham to conduct church services. He had about 80 to 100 regular members attending his church. The church had affiliation with the Assemblies of God Fiji and when the senior executives of the parent body learnt of the allegations against the offender, they acted swiftly and suspended his licence as a pastor.
- [2] All three victims were casual members who came to Agape Healing Ministry on the invitation of the offender for a 'prayer of deliverance'. The first complainant who was a married woman could not conceive. She was a distance relative of the offender. The offender convinced her that she could not conceive because she and her husband had

been cursed. He represented to her that he could remove the curse if she came to his church.

[3] The second complainant was an unmarried woman. The offender represented to her that her entire family was cursed and that he could remove that curse if she came to his church.

[4] The third complainant was a young woman in her early twenties. She was also a distance relative of the offender. He represented to her that he could help her with a health concern that she had if she came to his church.

[5] The incidents occurred on different dates in 2018. When the complainants arrived at the offender's residence, he instructed them that it was necessary, as part of the deliverance prayer, to engage in sexual acts with him or his church elders or members. The fraudulent misrepresentation was that the sexual acts were a legitimate part of a prayer of deliverance and that the complainants would remain cursed if they did not undergo a prayer of deliverance involving sexual acts. The representation was false in that sexual acts did not form any legitimate part of a prayer of deliverance in the church of which he was a recognized pastor. The misrepresentation was fraudulent because the offender knew that the representation that he made was false at the time that he made it.

[6] The two incidents involving the first complainant occurred in May 2018. In her evidence she described the incidents as follows. After she had dinner, the offender called her to the porch of his residence for prayer at around 10pm. When she went to the porch the Accused told her that she have to be delivered by having sex with another man who was not her husband. She told him that she was married and was afraid, but he insisted that the only way to be delivered of her curse was to have sex with another man. He got her to remove her undergarments. He lubricated his hands with oil and penetrated the complainant's private parts with his fingers (count one). While he penetrating her private parts he told her that there was "so much curse within her". She stayed that night at the offender's home.

- [7] The second incident occurred the following morning when the complainant was about to have her breakfast. The Accused called her in his bedroom. When she entered the bedroom she saw the Accused was sitting down with another female member of his church. The offender convinced the complainant that she had to be delivered that day. After getting her to remove her undergarments, he penetrated her private parts with his fingers and told her that there was something growing or swelling inside her (count two). The complainant felt ashamed but did not say anything as the other church member was present inside the room. He then told her that another male church member was going to deliver her that day. A male church member was called inside the room and when the Accused briefed him the process that involved sex with the complainant, that member refused to participate. The complainant did not reveal the alleged incidents to anyone because she was ashamed and did not expect that to be done to her in church.
- [8] The two incidents involving the second complainant occurred in June 2018. In the first incident the offender called the complainant to the porch of his residence at around 1am and instructed her to sit next to him. She said the porch light was turned off. He told her that she was going to be delivered of her curse by a male church elder. He told her the process involved sex with a man. He instructed her to go and bring the oil from inside his house. When she returned with the oil he lubricated his hand and penetrated her private parts with his fingers after pulling down her underwear (count three). While he penetrated her he said words to the effect of 'oh yes God there is more curse here'. She said she felt embarrassed and moved backwards.
- [9] At that point the offender called a male elder from inside his residence and instructed him to have sexual intercourse with the complainant while he will be praying for her at the altar. She was stunned but he convinced her that sexual intercourse with a man was necessary to remove her family curse. The church elder did have sexual intercourse with the complainant in the presence of the offender who gratified himself by touching his own private parts while watching the act.
- [10] After a while the Accused instructed the church elder to return to his room. The offender told the complainant that the church elder "with the bad body odour, does not know how to deliver". After the church elder left the scene, the offender said words to the effect of

“can you forgive talatala if talatala is going to deliver you”. The complainant felt ashamed and remained at the porch staring at him. The offender grabbed the complainant by her waist with his hands and said it’s not finished yet. He then had sexual intercourse with the complainant without asking her for her consent (count four). After having sexual intercourse, the Accused told the complainant to forgive him for what had happened and not to tell anyone. She said she did not complain to anyone because she did not have the courage to do so and was ashamed.

[11] The one incident of sexual assault involving the third complainant occurred in September 2018. The offender met the complainant at the Suva bus stand and convinced her to come to his church that same evening for prayer without informing her father. When she arrived at the church with a relative, the offender called her out to the porch. She went to the porch with her relative, but the offender told the relative that he wanted to see the complainant privately.

[12] When the complainant was left alone with the offender, he gave the complainant three options and one of the options was to be delivered. The complainant revealed to the offender that she had abdominal pain and he told her that he will massage her stomach, to which she agreed because he was a pastor. On his instructions she went inside the house and brought oil. He told her to stand up and he switched off the porch light saying people are watching. He told her to pull up her top, which she did. He then put on the oil and massaged her stomach. He told her to move closer to him while they faced each other. He asked her personal questions about her boyfriend and also suggested to try an older guy. While he was saying that his hand went inside her underwear and he touched the top part of her private parts (count five).

[13] At that moment she realised something was not right and she told him that her stomach only is painning and not her private parts. He removed his hand from her private parts and said that the sickness was not in her stomach, but in her private parts. He told her not to tell anyone about what had happened and for her to keep it as a secret, or she will die. She did not agree for him to touch her private parts. She said the offender kept asking her to be delivered by having sex with a man, but when she insisted she just wanted him to

pray over her, he told her that he was lazy and for her to go inside the house and get the girls there to pray for her. She did that and then returned to her home.

[14] The offences are objectively serious. The maximum penalty for rape is life imprisonment and the tariff for rape of an adult victim is from 7-15 year' imprisonment (*Rokolaba v State* [2018] FJSC 12; CAV0011.2017 (26 April 2018)). The maximum penalty for sexual assault is 10 years' imprisonment and the tariff is from 2-8 years' imprisonment (*State v Laca* [2012] FJHC 1414; HAC252.2011 (14 November 2012)). In cases of religious leaders convicted of rape or sexual abuse of their members or followers, sentences range from 9 years to 20 years imprisonment (*State v Gonedau* [2013] FJHC 84; HAC14.2012 (5 March 2013), *State v Kumar* [2013] FJHC 140; HAC142.2011 (27 March 2013), *State v Cakau* [2016] FJHC 287; HAC53.2015 (20 April 2016), *State v Vakadranu* [2016] FJHC 895; HAC057.2015 (5 October 2016) and *State v Cokanauto* [2017] FJHC 445; HAC327.2016S (27 June 2017).

[15] I now consider the aggravating factors. The offender was a religious leader. The victims placed their trust on him for spiritual guidance. Instead of giving the victims spiritual guidance, he sexually abused them. His actions were well planned and premeditated. He involved his other followers to help him to gain the trusts of the victims and to participate in the scheme to sexually abuse them.

[16] The offender targeted the victims because he knew they were vulnerable. He exploited their vulnerability for his own sexual gratification. The offending was a gross of breach of the victims' trust at both human and spiritual levels. He humiliated the victims. The victims have been mocked and ridiculed by their family and friends because of the actions of the offender. The psychological harm that the offender has caused to the victims is significant.

[17] I now consider the subjective circumstances of the offender. The offender is 48 years old and is married with three children. His youngest child is 5 years old. His family is dependent on him for financial support. He earned \$150.00 a week when he was employed as a pastor by the church. He is a first time offender, however, it is not possible for me to give his family circumstances and his previous good character undiminished

weight. The offender was bestowed with the responsibility of a pastor because of his family values and good character. However, he was a Wolf in sheep's clothing. Instead of upholding the trust and sanctity of his role as a pastor, the offender engaged in a conduct that had shocked the public conscience.

[18] The offender had been in custody on remand since 5 December 2018. I give him a reduction of two years for his remand period and other mitigating factors.

[19] The nature and gravity of the offences warrant deterrent punishment. The courts duty is to denounce the actions of the offender and send a clear message to the community that crimes of this nature will be dealt with condign punishment.

[20] For each individual offence I pitch the offender's criminality at the middle range of the tariff. But I must also take into account that the offender committed four separate acts of rape and one act of sexual assault against three victims. To reflect the offender's total criminality, I sentence him to an aggregate term of 16 years' imprisonment for the four counts of rape and a term of 4 years' imprisonment for the fifth count of sexual assault, to be served concurrently. The total effective sentence is 16 years' imprisonment with a non-parole period of 12 years.



Hon. Mr Justice Daniel Goundar

**Solicitors:**

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

