

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

LAUTOKA CRIMINAL CASE NO. HAC 109 OF 2018L

STATE

vs

AKUILA KUNAVUNI

Counsels : Ms. U. Tamanikaiyaroi for State
Ms. Narara and Ms. N. Singh for Accused

Hearings : 22, 23 and 24 February, 2021.

Judgment : 25 February, 2021.

Sentence : 26 February, 2021.

SENTENCE

1. In a judgment delivered yesterday, you were found guilty and convicted as charged, on the following counts, in the following information:

“Count 1

Statement of Offence

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

Particulars of Offence

AKUILA KUNAVUNI between the 1st day of January 2016 and the 31st day of December 2016 at Sigatoka, in the Western Division, penetrated the vagina of SNK, a child under the age of 13 years, with his finger.

Count 2

Representative Count

Statement of Offence

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

Particulars of Offence

AKUILA KUNAVUNI between the 1st day of January 2016 and the 31st day of December 2016 at Sigatoka, in the Western Division, had carnal knowledge of SNK, a child under the age of 13 years.

Count 3

Representative Count

Statement of Offence

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

Particulars of Offence

AKUILA KUNAVUNI between the 1st day of January 2017 and the 31st day of December 2017 at Sigatoka, in the Western Division, had carnal knowledge of SNK, a child under the age of 13 years.”

2. The brief facts were as follows: Between 1 January 2016 and 31 December 2017, the female child complainant (PW1) was residing with the accused, in a three bedroom house in a village in Sigatoka. She was 10 years old at the time, while the accused was 57 years old. In one bedroom, the accused slept, in another bedroom the accused's sister slept and the third bedroom was occupied by the complainant, her parents and her three young siblings. The accused was the complainant's grandfather's cousin.
3. Between 1 January to 31 December 2016, the accused took the complainant to his bedroom, made her lie down on the floor, laid on top of her and inserted a finger into

her vagina (count no. 1). Between 1 January to 31 December 2016, the accused came into her bedroom, laid her on the floor facing up, took off her clothes and inserted his penis into her vagina. The complainant said, he did the above to her on two separate occasions (count no. 2). Between 1 January and 31 December 2017, the accused did the above to the complainant on two other separate occasions, at a house, about 40 footsteps from their residence (count no. 3). When the above offences were committed, the female child complainant was under the age of 13 years.

4. The offence of rape carried a maximum sentence of life imprisonment (see Section 207 (1) of the Crimes Act 2009). Parliament therefore views the offence as a serious one. It violates the dignity of a person. It is an unwarranted intrusion into the privacy of a person. It is an ultimate act of showing utter disrespect to a person. Therefore those who commit this offence, must expect a lengthy prison sentence to restore the balance, the harmony and atonement to the victim. For the rape of child, that is, anyone less than 18 years old, the tariff is a sentence between 11 and 20 years imprisonment. I refer to the authority of Gordon Aitcheson v The State, Criminal Petition CAV 012 of 2018, Supreme Court of Fiji. Of course, the final sentence will depend on the mitigating and aggravating factors.

5. The aggravating factors, in this case, were as follows:

(i) **Serious Breach of Grandfather's Trust.** You were 57 years old at the time. The female child complainant (PW1) was 10 to 11 years old at the time. You were related to each other. You were her grandfather's cousin. You lived in the same house in different bedrooms. The complainant obviously trusted you as a grandfather because she called you "Tai Waku". In a village setting, the elders always looked after the young. It was your role as a grandfather, to look after and care for the complainant. In a sense, she was your

granddaughter. You were supposed to care for her and counsel her to become a worthy citizen of Fiji. However, you abused the trust she had in you. You exploited her naivety as a child and raped her on five separate occasions. This was the height of all evil within a family and you must not complain when you are punished for it.

- (ii) **Rape of Children.** Unfortunately, this problem is becoming prevalent in our society, despite the heavy prison sentence passed by the courts for the rape of children. The court had said in the past, and will keep on saying that it will not tolerate the abuse of children in our society. As it had done in the past, and is now doing and will continue to do, it will pass heavy prison sentences for the rape of children, as a warning to others.
- (iii) By offending against the complainant, you had no regards to her right as a child, her right as a human being and her right to live a happy and peaceful life.
- (iv) You had caused untold miseries to her family.

6. The mitigating factors are as follows:

- (i) At the age of 61 years, this was your first sexual offence;
- (ii) You pleaded guilty earlier for count no. 1, and thereby saved some court time;
- (iii) You had been remanded in custody since 8 June 2018, that is, 2 years 8 months 18 days ago.

7. On count no. 1 (rape), I start with a sentence of 12 years imprisonment. I add 6 years for the aggravating factors, making a total of 18 years imprisonment. For time already served, while remanded in custody awaiting trial, I deduct 2 years 9 months, leaving a balance of 15 years 3 months. I deduct another 3 months for pleading guilty to count no. 1 on 22 June 2020, which was approximately 2 years 14 days

after first call in the High Court, leaving a balance of 15 years imprisonment. I deduct another 2 years for the fact that this was your first sexual offending, leaving a balance of 13 years imprisonment. On count no. 1, I sentence you to 13 years imprisonment.

8. For count no. 2 (rape) and 3 (rape), I repeat the above process.

9. In summary, your sentences are as follows:

(i) Count No. 1 - Rape - 13 years imprisonment.

(ii) Count No. 2 - Rape - 13 years imprisonment.

(iii) Count No. 3 - Rape - 13 years imprisonment.

10. Because of the totality principle of sentencing, I direct that the above sentences, be made concurrent to each other, making a final sentence of 13 years imprisonment.

11. Mr. Akuila Kunavuni, for raping the child complainant numerous times between 1 January 2016 to 31 December 2017, at Sigatoka in the Western Division, I sentence you to 13 years imprisonment, with a non-parole period of 10 years imprisonment, effective forthwith.

12. The above sentence is designed to punish you in a manner that is just in all circumstances, to protect the community from people like you, to deter other would-be offenders and to signify that the court and the community denounce what you did to the child complainant between 1 January 2016 to 31 December 2017 at Sigatoka in the Western Division.

13. The name of the complainant is permanently suppressed to protect his privacy.

14. In addition to the above, a permanent domestic violence order with standard non-molestation conditions is issued for the safety of the complainant. This order will remain subject to the orders of this court.
15. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Legal Aid Commission, Suva.