

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 024 OF 2020S

STATE

VS

WALTER WISE

**Counsels : Ms. W. Elo and Ms. A. Devi for State
Ms. L. Ratidara for Accused**

Hearings : 3, 4 and 5 May, 2022.

Judgment : 6 May, 2022.

Sentence : 13 May, 2022.

SENTENCE

1. In a judgment delivered on 6 May 2022, you were found guilty and convicted on the following count in the following information:

"Count 1

Statement of Offence

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

Particulars of Offence

WALTER WISE sometimes in November, 2019 at Wailoku in the Central Division, penetrated the vagina of L.G, a 7 year old child, with his fingers without her consent."

2. The brief facts were as follows. The female child complainant (PW1) was born on 22 January 2012. In November 2019, she was 7 years old. She resided with her father, mother, brother and sister at Wailoku. The accused was 48 years old. He was a good friend of the complainant's father. He was also residing with the complainant's family at the time. Sometimes in November 2019, the complainant's mother left the house to take her husband's dinner to work. Her husband was still at work at the time. The complainant's sister was asleep in another bedroom.

3. The complainant and the accused were watching a cartoon movie on a laptop in the sitting room. The accused was sitting down with his legs crossed. The accused told the complainant to sit on his lap, on top of his crossed legs, while they were watching the cartoon movie. The complainant said, while they were alone in the sitting room, the accused began to touch her vagina. She said, he even touched the inside of her vagina. She said, her vagina is where she urinates from. She said, he then poked her vagina with his left finger. She said, when the accused did the above, her vagina was painful. She said, the accused was hugging her from the back, as he poked her vagina. She said, she told the accused to stop, but he ignored her. She said, she cried. She said, the accused only stopped when uncle Tui came into the sitting room. You had been found guilty and convicted of the above rape (count no. 1).

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 a 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) **Breach of a Friend's Trust.** You were 48 years old. You were the complainant's father's best friend. As such, he let you into the house and permitted you to live with them. The female child complainant was only 7 years old. There was a 41 years age gap between the two of you. As her father's friend, the complainant treated you as her uncle. As such, you were supposed to look after her and care for her, and to see that no harm comes to her. Yet, you did the unthinkable. You penetrated her vagina with your finger. This was uncalled for. You realize that you will have to be punished with a custodial sentence, as a warning to others.
- (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 now is 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 mitigation factors were as follows:

- (i) At the age of 50 years, this was your first sex offence;
- (ii) You had been remanded in custody from 11 December 2019 to 15 November 2021, that is, approximately 1 year 11 months 5 days.

7. On count no. 1 (rape), I start with 12 years imprisonment. I add 5 years for the aggravating factors, making a total of 17 years imprisonment. For time already served while remanded in custody awaiting trial, I deduct 2 years, leaving a balance of 15 years imprisonment. For being a first sex offender at 50 years old, I deduct 2 years, leaving a balance of 13 years imprisonment.
8. Mr. Walter Wise, for sexually offending against the 7 year old child complainant in November 2019 at Wailoku in the Central Division, I sentence you to 13 years imprisonment, with a non-parole period of 11 years imprisonment, effective forthwith.
9. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to signify that the court and the community denounce what you did to the 7 years old complainant sometimes in November 2019, at Wailoku in the Central Division.
10. The 7 year old complainant's name is permanently suppressed to protect her privacy.
11. You have 30 days to appeal to the Court of Appeal.



Solicitor for State
Solicitor for Accused

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Office of the Director of Public Prosecution, Suva
Legal Aid Commission, Suva



Salesi Temo
JUDGE