

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 164 OF 2020S**

**STATE**

**VS**

**ILAISA BALEKANA**

**Counsels : Ms. K. Semisi and Ms. S. Bibi for State  
Ms. L. Filipe for Accused**  
**Hearings : 26, 27 and 28 April, 2022.**  
**Judgment : 3 May, 2022.**  
**Sentence : 13 May, 2022.**

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**SENTENCE**

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1. In a judgment delivered on 3 May 2022, you were found guilty and convicted on the following counts in the following information:

**“Count 1**

***Statement of Offence***

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

***Particulars of Offence***

***ILAISA BALEKANA on the 9<sup>th</sup> day of June 2019 at Babavoce Settlement in the Eastern Division had carnal knowledge of M.T.L.S without her consent.***

**Count 2**

***Statement of Offence***

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

*Particulars of Offence*

*ILAISA BALEKANA on the 9<sup>th</sup> day of June 2019 at Babavoce Settlement in the Eastern Division penetrated the vulva of M.T.L.S with his tongue without her consent."*

2. The brief facts were as follows. The complainant was born on 5 April 2003. On 9 June 2019, she was 16 years old and was a Form 5 student at a secondary school in Narere. She resided with her parents at a village in Tailevu. The accused was 49 years old, married with four children aged between 22 to 13 years old. He was a security officer and also runs a car business. The accused and the female complainant attend the same church in Tailevu.
3. On 9 June 2019, the female complainant and her family went to attend a church gathering after 6.30 pm. During the church service, the female complainant went out in the accused's car to drop off some washed clothings to their house in the village. The accused was driving the car. Later, the two went to the accused's residence to get a spare tyre. After getting the tyre, the accused parked the car in a secluded spot next to his residence.
4. He then told the complainant to go to the back seat of his car. She did so. He followed her, and opened the car door next to her. He told her he wanted to have sex with her. The complainant refused. He then forced himself on her by licking her vagina and penetrating her vulva with his tongue (count no. 2). Later, he inserted his penis into her vagina, without her consent, well knowing she was not consenting to the same, at the time (count no. 1). On 17 June 2019, the complainant reported the above to her teachers, and later on 18 June 2019, it was reported to police. You have now been found guilty and convicted of two rape counts, that is, count no. 1 and 2.
5. 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.

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

- (i) **Breach of Relative's trust.** The complainant said you are related to each other. She was your cousin. She was 16 years old. You were 49 years old. There was an age gap of 33 years. Because she was your relative, you were supposed to care for her and look after her, so that no harm comes to her. However, you abused the trust she had in you by raping her twice. This is not the proper way to relate to your younger relatives. You will have to be given a custodial sentence, as a warning to others.
- (ii) Looking at the facts, it was obvious you planned your sexual attack on the complainant. You took her away from church, drove her to a secluded spot, on the pretext of getting a spare tyre, and then committed the two rapes on her.
- (iii) **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.
- (iv) 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.
- (v) You had caused untold miseries to her family.

7. The mitigating factors were as follows:

- (i) At the age of 52 years, this is your first offence;

- (ii) You were remanded in custody for 1 month 4 days, while awaiting trial.
8. On count no. 1 (rape), I start with 11 years imprisonment. I add 5 years for the aggravating factors, making a total of 16 years imprisonment. For time already served while remanded in custody, I deduct 2 months, leaving a balance of 15 years 10 months imprisonment. For being a first offender at the age of 52 years, I deduct 3 years 10 months, leaving a balance of 12 years imprisonment. On count no. 1 (rape), I sentence you to 12 years imprisonment.
9. For count no. 2 (rape), I repeat the process and sentence in count no. 1 (rape), that is, 12 years imprisonment.
10. The summary of sentences are as follows:
- (i) Count no. 1 - Rape : 12 years imprisonment.
  - (ii) Count no. 2 - Rape : 12 years imprisonment.
11. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, making a final total sentence of 12 years imprisonment.
12. Mr. Ilaisa Balekana, for the sexual offences you committed against the 16 year old female complainant on 9 June 2019 at Babavoce Settlement in the Eastern Division, I sentence you to 12 years imprisonment, with a non-parole period of 11 years imprisonment, effective forthwith.
13. 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 16 years old complainant on 9 June 2019, at Babavoce Settlement in the Eastern Division.

14. The 16 year old complainant's name is permanently suppressed to protect her privacy.

15. 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**

A handwritten signature in blue ink, appearing to be "Salesi Temo".

**Salesi Temo**  
**JUDGE**