

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 10 of 2022

THE STATE

vs.

SERUPEPELI RAMAKITA

Counsel : Ms. A.Vavadakua for the State
Ms. M. Ratidara for the Accused

Date of Judgment : 20 May 2022

Date of Sentence : 23 May 2022

SENTENCE

1. MR. SERUPEPELI RAMAKITA, you stand convicted after trial of one count of Rape contrary to Section 207 (1) & (2)(a) of the Crimes Act No. 44 of 2009 and come before this Court for sentence.
2. You have committed this crime on a child. She was 14 years of age at the time of the alleged incident. She was living with her mother and elder sister. She was your neighbour and she regarded you as her grandfather. On the morning of 11 December 2021, when her mother was away, you called her to your house showing a pineapple. When she came to your house to take the pineapple, you pulled her by her shoulder and took her to the upper part of your living

room. She pushed you and she wanted run outside but you pushed her down. You took off her pants and the undergarment, climbed on her and inserted your penis into her vagina without her consent. She relayed the incident to her uncle who noticed that she was in distress. She was medically examined after five days by a doctor who observed an old tear at 9 o'clock position of her vagina.

3. The maximum penalty for Rape is life imprisonment. The sentencing tariff for rape of a child ranges from 11 to 20 years' imprisonment (*Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018)).
4. In the sentencing process, I must first have regard to the proportionality principle enshrined in the Constitution, and the Sentencing and Penalties Act 2009 (SPA). Section 4 of the SPA requires the courts to have regard to the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. I am then required to gauge the seriousness of the offence and the impact or harm caused to the victim in selecting the starting point of the sentence before coming to the final sentence after making due adjustments for the aggravating and the mitigating circumstances.
5. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on Rights of the Child to which Fiji is a party and our own Constitution require the courts to protect the children who are vulnerable members of our society. The children are entitled to live their lives free from any form of physical or emotional abuse.
6. The courts have emphasized that the increasing prevalence of this offence in the community calls for deterrent sentences. The duty of this Court is to see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The rapists must receive condign punishment to mark the society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to protect the public from the commission of such crimes by making it clear to you and to other persons with similar impulses that, if anyone yield to this crime will meet with severe punishments.

7. Having taken into consideration the seriousness of the offence and the harm caused to the victim, I select a starting point of 12 years from the lower range of the tariff as the first step in the sentencing process.
8. In the light of the Supreme Court decision in Ram v State [2015] FJSC 26; CAV12.2015 (23 October 2015), and the submissions of the Counsel, I have identified the following aggravating and mitigation factors:

Aggravating factors:

- (a) It appears that you have planned this crime. You waited for the victim's mother to leave the house to lure the victim into your house by showing her a pineapple.
- (b) You have breached trust; the victim regarded you as her grandfather and she entered your house trusting you.
- (c) There is a huge age difference between you and the victim.
- (d) You exploited vulnerability of a child when her mother was away from home.

Mitigating Factors:

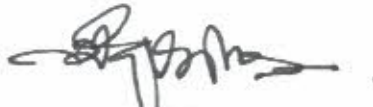
- (a). Family /Personal circumstances- You are 52 years of age at the time of the offending. You are married and a father of two children who are still schooling. You are a farmer by profession, looking after your family. However, your personal circumstances are of little mitigation value. Raj v The State [2014] FJSC 12 CAV0003.2014 (20th August 2014)
- (b). Clear Record- You do not have any previous convictions and you have maintained a clear record. However, your clear record is of little value in this case because you committed this crime in breach of trust. Senilokula v State [2018] FJSC 5; CAV0017.2017 (26 April 2018)

9. I add 2 years to the starting point of 12 years for above mentioned list of aggravating factors and reduce 1 year for mitigating factors to arrive at a sentence of 13 years' imprisonment.
10. You have been in remand for nearly 6 months. Exercising my discretion under Section 24 of the Sentencing and Penalties Act, I reduce the time spent in remand to arrive at a sentence of 12 years and 6 months' imprisonment.
11. Taking into consideration your potential for rehabilitation, and the gravity of the offence, I impose a non- parole period of 10 years.
12. Summary.

Mr. SERUPEPELI RAMAKITA, you are sentenced to an imprisonment term of 12 years and 6 months with a non-parole period of 10 years.

You have 30 days to appeal to the Fiji Court of Appeal.




Aruna Aluthge
Judge

23 May 2022

At Suva

Counsel:

- **Office of the Director of Public Prosecution for State**
- **Legal Aid Commission for Accused**