

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 216 OF 2022

BETWEEN : STATE

AND : AVEUTA ULUVAI

Counsel : Ms N Ali for the State
Ms L David for the Accused

Date of Hearing : 3, 10 & 16 August 2022

Date of Sentence : 16 August 2022

SENTENCE

- [1] The accused has pleaded guilty to one count each of sexual assault and digital rape. The victim is a child.
- [2] The incidents occurred at Nasautoka village in Tailevu between 1 January 2020 and 31 October 2021. At the time the victim was 8 years old. The accused was about 30 years old. The victim is his niece.
- [3] The sexual assault occurred at the village hall. The accused touched the victim's genitalia over her clothes. The contact was fleeting and the victim did not complain to anyone.
- [4] The rape occurred at the accused's farm. The victim accompanied him to the farm upon his request. While at the farm the accused pulled down the victim's undergarments and licked her genitalia. The duration of assault was short. Later the victim disclosed the incident to her school teacher.

- [5] On 2 July 2022, the victim was medically examined. Nil injuries were found on her body.
- [6] The accused was arrested and interrogated under caution. The accused made full admission to the police in his record of interview. He told the police that he got sexually aroused after seeing the victim and that he could not hold himself back.
- [7] The maximum penalty for sexual assault is 10 years imprisonment. Sentences for sexual assault range from 2 to 8 years imprisonment (*State v Laca* [2012] FJHC 1414; HAC252.2011 (14 November 2012)).
- [8] Rape is a more serious sexual offence. The offence is punishable by life imprisonment and sentences for rape of a child range from 11 years imprisonment to 20 years imprisonment. The primary purposes of sentence for rape is to denounce the crime by imposing sentence that has the effect of deterrence on the offender and others.
- [9] In *Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015), the Supreme Court observed:

[21] The casting of the offence of rape in the Crimes Decree is such that no distinctions are drawn as to gravity of offending dependent on the object used to penetrate or of the orifice of the victim penetrated. No separate penalties are prescribed. Sufficient no doubt is the unwanted invasion, the violation of the person, the forcible intrusion into the privacy and body of another.

- [10] In *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018) the Supreme Court said:

[24] The increasing prevalence of these crimes, crimes characterized by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise

their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

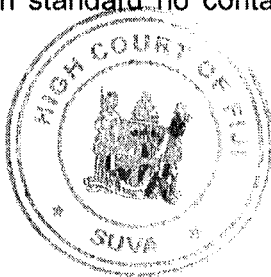
[25] The tariff previously set in *Raj v The State* [2014] FJSC 12 CAV0003.2014 (20th August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.

- [11] The aggravating features of this case are that the accused was in a position of trust with the victim and that he breached her trust when he exploited her for his sexual gratification. The age gap between them was vast and the sexual abuse was repeated in a form of digital rape after the first incident of sexual assault at the village hall.
- [12] Although the victim did not sustain physical injuries during the incidents, the court cannot ignore that crime of this nature harms a child, both physically and psychologically. Fortunately, the accused has relieved the victim from the distress of giving evidence in court by pleading guilty to the charges.
- [13] In *Koroi v State* [2003] FJCA 7; AAU0037U.2002Si (14 February 2003), the Court of Appeal endorsed the practice of reducing a sentence for relieving victims of sexual offences the trauma of giving evidence in court as follows:

It has long been the practice of the courts to reduce a sentence where the accused person has pleaded guilty. In most cases that is a recognition of his contrition as expressed by an early admission and the fact that it will save the witnesses and the court a great deal of time and expense. In offences of a sexual nature, the amount of reduction is generally more

because the plea saves the victim from having to attend the trial and relive her experience in the witness box.

- [14] The guilty pleas have saved considerable court's time and resources. The accused's admission to the police and his early guilty pleas indicate that he is genuinely remorseful for his crime. His previous good character also mitigates his offence.
- [15] I pick 11 years imprisonment as my starting point, add 4 years to reflect the aggravating factors and deduct 4 years to reflect the mitigating factors and the remand period of 2 months.
- [16] For the offence of digital rape, the accused is convicted and sentenced to 11 years imprisonment.
- [17] The duration of sexual assault over the clothes was fleeting. The level of culpability falls on the lower end of the range.
- [18] For the offence of sexual assault the accused is convicted and sentenced to 2 years imprisonment.
- [19] Both sentences are made concurrent. The total sentence is 11 years imprisonment with a non-parole period of 9 years.
- [20] The DVRO with standard no contact and non-molestations conditions is made permanent.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

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