

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 35 OF 2022**

**STATE**

**VS**

**JOSEFA DRUGU**

**Counsel:** Ms. M. Lomaloma for the State  
Ms. M. Besetimoala for the Accused

**Date of Sentence Hearing:** 12<sup>th</sup> October, 2022

**Date of Sentence:** 14<sup>th</sup> October, 2022

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**SENTENCE**

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*(The name of the victim is suppressed she will be referred to as "L.A")*

**Introduction**

1. You Josefa Drugu stood charged with eight counts as follows;  
Count 1 – Sexual Assault, representative count in contrary to Section 210 sub-section 1 (a) of the Crimes Act.  
Count 2 – Rape – representative count in contrary to section 207, sub-section 1 and sub-section 2 (b) and sub-section 3 of the Crimes Act.

Count 3 – Rape – representative count contrary to section 207, sub-section 1 and sub-section 2 (b) and sub-section 3 of the Crimes Act 2009.

Count 4 – Rape- contrary to section 207, sub-section 1 and sub-section 2 (a) and sub-section 3 of the Crimes Act of 2009.

Count 5 – Rape – representative count in contrary to section 207, sub-section 1 and sub-section 2 (a) and sub-section 3 of the Crimes Act.

Count 6 - Sexual Assault – contrary to section 210 subsection 1 (a) of the Crimes Act.

Count 7 – Rape – in contrary of section 207 – 1 and 2 (b) and 3 of the Crimes Act.

Count 8 – Rape – contrary to section 207 - 1 sub-section 2 (a) and sub-section 3 of the Crimes Act 2009.

2. You pleaded guilty to counts No. 1 and 6 of sexual assault and to Counts No. 3 and 7 being that of Rape contrary to Section 207(1) and (2) (b) and (3) of the Crimes Act, 2009 where you were alleged to have penetrated the vulva of **L.A**, a child below the age of 13 years, with your tongue and Count No. 8 being Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act, 2009.
3. You being aware and well advised of the legal effects, did plead guilty to Counts No. 1,3,6,7 and 8 in the presence of your Counsel. This Court is thus satisfied that you have fully comprehended the legal effects and that your plea was voluntary and free from influence.
4. The following summary of facts read and explained on 11<sup>th</sup> of October, 2022 reveals that the said offences of sexual assault and of Rape were committed which you admitted. The facts
  - a. The complainant L.A was a 12 year old, student of Lomate Settlement, Vuya, Bua and the accused Josefa Drugu, was a 62 year old, Farmer of Lomate Settlement, Vuya, Bua and is the complainant’s grand-uncle and they were living in the same house at the time of the incident.
  - b. In January 2021, whilst the complainant was sleeping in her room in the middle of the night she felt someone touching her breast, the complainant woke up and saw someone standing over her. She then called out ‘Bu’

meaning grandfather, the person responded and the complainant realized that it was the accused. The complainant told the accused to stop touching her breast, however he did not stop but continued to fondle the complainant's breasts and then removed the complainant's clothes and his clothes. He then open the complainant's legs and licked the complainant's vulva and penetrated her vulva with his tongue, the complainant cried and begged the accused to stop, however he did not, once the accused was done he then left the room.

- c. The last incident occurred on Friday the 8<sup>th</sup> of April 2022 when the complainant was alone at home with the accused, the complainant went to sleep around 7:00pm in her room when she felt someone touching her breasts, when she woke up she saw that it was the accused who was standing by her bed. She begged the accused to stop, however he told her that he'll only stop once he's done. The accused then removed her shorts and underwear, he spread the complainant's legs and then started to lick her vagina and insert his tongue into the complainant's vulva. After licking the complainant's vulva the accused took off his shorts and laid on top of the complainant, took out his penis and penetrated the complainant's vulva with his penis. The accused then got up, put on his clothes then left the room.
- d. The next day the 9<sup>th</sup> of April 2022, the complainant ran away to her Aunt's place where she told her aunt namely Maria Disamu of what the accused has done to her and asked her if she could inform her parents of the same. On Sunday 10<sup>th</sup> of April 2022 the complainant's Aunt took the complainant back to her parents and informed them of what the complainant had told her. The matter was then reported to the Nabouwalu Police Station. On the 19<sup>th</sup> of April 2022 the complainant was taken to the Nabouwalu Hospital where she was medically examined and a medical report was compiled and it was noted that the hymen was absent. The accused was arrested and escorted to the Nabouwalu Police Station where he was interviewed under caution and the accused admitted to the allegations and the accused was charged thereafter. In the caution Interview the accused admitted fondling the complainant's breasts in

question and answer number 60 to 62, and he admitted licking the complainant's vagina in question and answer number 70.

5. This Court is satisfied that, you did fully understood the nature of the charge and the consequences of pleading guilty. However as you have pleaded not guilty to counts No 2, No. 4 and No. 5 and this court will not in any way take into account the existence of such charges in considering your sentence.
6. This Court is satisfied that the summary of facts satisfy the ingredients of sexual assault and the rape as charged in counts No. 1,3,6,7 and 8. Accordingly, this Court finds you guilty of counts No. 1 and 6 of sexual assault and counts No. 3, 7 and 8 of rape as charged on your own pleas of guilt and convict you separately for the said offences as charged.
7. The submissions on sentence and mitigation tendered by your Counsel and the State Counsel are comprehensive and helpful.
8. Josefa Drugu, for the counts of Rape contrary to Section 207 (1) and (2) (a)(b) and (3) of the Crimes Act, 2009 you have been found guilty and stand convicted carries a maximum sentence of life imprisonment.
9. As for the said counts of Rape, the occasions on which you inserted your finger, tongue and the penis into the girl's vulva in the period from the 1<sup>st</sup> day of January 2021 and the 8<sup>th</sup> of April 2022 you were 62 years and the girl was 12 years of age. This is a case of sexual exploitation of a young child by a known elder (grand-uncle) living in the same house. You were in a position of trust. The culture and the rich traditions of the Fijian society expects you to protect little children in the community and the elders enjoy the respect and veneration of the community and the young. You taking advantage of this rich culture sexually exploited L.A the victim. Sexual exploitation of children within their own household by known elders has become a social menace. Therefore, I find this offending serious.
10. In view of the serious nature of the crimes of this nature, the primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community especially the children from offenders of this nature. A harsh and long custodial sentence is inevitable for offences of this nature to

demonstrate the gravity of the offence and reflect that civilized society denounces such crimes without any reservation.

11. In the case of *State v. Tauvoli* [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

*“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”*

12. Gates CJ in *Aitcheson v State* ([2018] FJSC 29; CAV0012.2018 (2 November 2018)) held that:

*“The tariff previously set in *Raj v The State* [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> 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.”*

### Sentencing regime

13. The maximum penalty prescribed for both, Rape contrary to Section 207 (1) and (2) (a) and (3) as well as for Rape contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act is life imprisonment as this undoubtedly is considered to be a very serious offence. The tariff is between 11 years and 20 years imprisonment. Determining the said applicable tariff Gates C.J., in *Aitcheson v. State* ([2018] FJSC 29; CAV0012.2018 (2 November 2018)) held that,

*“The tariff previously set in *Raj v The State* [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> 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.”*

14. As for sexual assault in **State v Laca** - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012), Justice Paul Madigan considering the tariff for the offence of sexual assault stated thus,

*“6. The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in **Abdul Kaiyum** HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.*

*7. A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:*

**Category 1** *(the most serious)*

*Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.*

**Category 2**

- (i) Contact between the naked genitalia of the offender and another part of the victim's body;*
- (ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
- (iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim*

**Category 3**

*Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)”.*

15. The maximum penalty for the offence of sexual assault under Section 210 (1) (a) is ten years imprisonment. As the law stands now the tariff for sexual assault is between 2 - 8 years' imprisonment and Counts No. 1 and 6 touching of the breasts will category 3.

Objective seriousness, culpability and harm of the offending

16. In the case of *State v. Tauvoli* [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

*“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”*

17. Rape as well as sexual assault are physical invasions committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.
18. **The victim impact report** states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, complainant has said that since her body was violated and was exposed to this sexual abuse, and that she felt so dirty inside her and she did not want to talk about it. She unable to trust any man after this abuse. She had been reluctant to go to school. At one stage she had contemplated committing suicide too, as she could not stand all that was happening to me, being pressured from schoolmates, members of my community continuously questioning me of the incident and more so, as she felt so ashamed, blamed and lonely.

The aggravating circumstances

19. I will now consider the aggravating factors. I observe the following aggravating circumstances of your offending:

- (i) There is a serious breach of trust. Your role was a grand-uncle to a child *vis-à-vis* the victim and now it is proved that you raped her. You occupied a position of power and trust in relation to your grand-niece. Such a position of power over the other who is a minor renders such sexual activity morally wrong and punishable within the realms of the criminal law. L.A was vulnerable to your seniority in age and the familial standing. You were in a position of trust. The rape of a child is an appalling and perverse use of male power exploiting to the full the position of power which you held over her. She was raped and molested by a person from whom she was entitled to expect protection and care. You violated the trust which the complainant and her mother placed in you and abused that position of trust.
- (ii) There was a considerable disparity in age between you and the complainant. The complainant was 12 years old at the time you committed these offences and you were around 61 years so you were approximately 49 years her senior in age.
- (iii) This involved some planning and scheming and premeditation.
- (iv) You took advantage of the complainant's vulnerability, helplessness and innocence.
- (v) You have exposed the innocent mind of a child to sexual activity at such a tender age you had no regard to her rights as a child, her right as a human being and her right to live a happy unmolested and peaceful life.
- (vi) You have caused misery to her mother and family.

#### The mitigating factors

20. The mitigating factors in your favour are;

- (i) That you are widowed with no children and involved in village activities, these are all personal circumstances which are usually not considered as mitigating circumstances,
- (ii). as per the Antecedent Report filed, it is noted that you neither have any previous conviction nor pending cases. Therefore, Court considers you as a person of previous good character,
- (iii). pleaded guilty early and at the outset,



- (iv). co-operated with the police, you are remorseful and seek forgiveness;
- (vi). you are around 61 years of age now.

### Sentence

21. Your offences are so serious that only a custodial sentence can be justified. The least possible sentences I can impose, having regard to the aggravating and mitigating factors of the case, will be as follows:

a. We will start with the serious offences of rape. For counts 3, 7 and 8, I pick and start with a sentence of 15 years imprisonment. I add a 4 years for the aggravating factors, making a total of each sentence 19 years imprisonment. As for the mitigating factors you should receive a considerable discount in the sentence. In this regard, I will consider a reduction of 2 years for the previous good character and another 1 year for the cooperating with the police which will bring down your sentence to 16 years. As for the early guilty plea I will deduct 5 years which is almost a 1/3<sup>rd</sup> reduction which brings your sentences down to eleven (11) years' imprisonment. Thus, on counts 3, 7 and 8, (rape), I sentence you to 11 years imprisonment for each of the said counts separately.

b. Now, as for counts No. 1 and 6 of Sexual assault, of touching the breasts will be category 3 of the tariff (**State v Laca-** supra). As such I pick a sentence of 4 years imprisonment. I add a modest 2 years for the aggravating factors, making a total of 6 years imprisonment for the counts of sexual assault. For the mitigating factor as aforesaid will deduct 2 years, leaving a balance of 4 years imprisonment. As for the early guilty plea I will deduct 1 year which is almost a 1/3<sup>rd</sup> reduction which brings your sentences down to three (03) years' imprisonment.

22. I am satisfied that you are manipulative; you are somewhat of a sexual predator of a prepubescent child to some extent; you are dangerous. The public and in particular young females and prepubescent children need protection from you. On the one hand this is a case which would justify a long 'denunciatory' sentence. I bear in mind that, such a sentence is one of last resort. However, in the circumstances of this offending in

my judgment, justice and protection of the public can and should be achieved by such a very long sentence.

23. Thus, to in my thinking the sentences of rape and sexual assault counts of your offences must be consecutive. However, I have to bear in mind totality. To that end arrive at a just compromise between the competing factors and interest of the society and direct and order that, the sentences run concurrently. The total sentence then is 11 year's imprisonment.
24. In view of the reasons discussed above, I sentence you to a total period of eleven (11) year's imprisonment for the counts of Rape and sexual assault for which you stand convicted.

#### Non-parole period

25. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation.
26. Considering the above, I impose 8 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case

#### Head Sentence

27. Accordingly, I sentence you for a period of eleven (11) years' imprisonment for the 1<sup>st</sup> Count of Rape as charged in the information. However, you are not entitled to parole for 8 years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### Actual Period of the Sentences

28. I also observe from the Court record and the submissions that you have been in remand since 19<sup>th</sup> April 2022 up to date for 05 months and 25 days. In the exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 06 months upon it being considered as a period of

imprisonment already served. In view of the above, the final sentence will be 10 years and 6 month period of imprisonment.

29. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to consider the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
30. Accordingly, the actual total period of your sentence is ten (10) years and six (6) month's imprisonment with a non-parole period of seven (07) year and six (6) months.
31. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Section 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competent Court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.
32. The complainant's name is permanently suppressed to protect her privacy.
33. You have 30 days to appeal to the Court of Appeal if you so desire.



  
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**K.M.G.H.Kulatunga**  
**JUDGE**

**At Labasa**  
14<sup>th</sup> October, 2022

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