

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 052 OF 2020

BETWEEN : STATE

AND : DINESH KUMAR

Counsel : Ms A Vavadakua for the State
Mr K Prasad for the Accused

Date of Hearing : 31 October, 1 – 3 November 2022

Date of Judgment : 18 November 2022

Date of Sentence : 25 November 2022

SENTENCE

- [1] The offender was charged with two counts of rape and one count of breaching a suspended sentence. He pleaded not guilty to the charges. He was convicted of all three charges after trial.
- [2] The victim was 15 years old and a student when the accused raped her. She is the step-granddaughter of the accused. The accused's son is the victim's stepfather.
- [3] The incident occurred on a school day. The victim's family had gone to their farm. When the victim returned home from school, she went straight into her room to change her school uniform. The accused surprised her when he entered her room without any notice. After entering her room he gagged her mouth with a cloth to stop her from raising alarm. He then had sexual intercourse with her for about five minutes and also penetrated her vagina with his finger.

- [4] When he left the house, she immediately went to her aunt living next to her home in a distressed condition and reported that her grandfather had raped her. The aunt immediately alerted the victim's parents who then reported the matter to police.
- [5] The victim was medically examined. Fresh injuries consistent with sexual penetration were found in her genitalia.
- [6] Under caution, the accused admitted to sexual intercourse with the victim but at the trial he retracted his admission saying that it was obtained by police using force.
- [7] On 30 April 2018 the offender was convicted and sentenced to 15 months imprisonment – serve 8 months in prison and 7 months suspended for 3 years, for an offence of indecent assault on another child when he was a caretaker in a school (Nausori Criminal Case No 230 of 2018). While the suspended sentence was operational the offender raped his juvenile granddaughter on 22 January 2020.
- [8] The offender is now 51 years old. He is married with grown up children. But his sexual perversion is towards juvenile girls. He is a pedophile and the community must be protected from him. The courts have repeatedly said rape of a child is an abhorrent crime and that a long prison sentence is justified to mark the society's disapproval of such crimes.
- [9] The offence of rape is punishable by life imprisonment and the tariff for rape of a child range from 11-20 years imprisonment ((*Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018)).
- [10] There is hardly any mitigating factors present in this case. The aggravating factors are that the accused grossly breached the trust of his granddaughter the victim, the age gap between them was vast, she was exposed to pregnancy and STDs due to unprotected sex, she sustained injuries and experienced pain during sexual intercourse, her mouth was gagged with a cloth to prevent her from raising alarm and the stigma of rape made her stop going to school.

- [11] The two forms of sexual penetration were part of the same transaction. I consider an aggregate sentence is appropriate. I pick 11 years as my starting point and add 5 years to reflect the aggravating factors. On counts one and two, the accused is sentenced to 15 years imprisonment.
- [12] For the offence of breaching suspended sentence on count three I have decided that the offender should serve his suspended term in prison. He committed a more serious offence of rape during the operational period of a suspended sentence for indecent assault. He did not make use of the suspended sentence to rehabilitate himself during the operational period.
- [13] I order that the offender serve the balance of 7 months imprisonment, consecutively with the sentence of 15 years imprisonment. The total sentence is 15 years 7 months imprisonment.
- [14] The final factors to be considered are the remand period and the period the offender should serve before eligible for parole. The remand period is about two years. That period is considered as time already served. The remaining term for the offender to serve is 13 years 7 months imprisonment, with a non-parole period of 11 years.
- [15] The interim DVRO with standard no-contact and non-molestation conditions is made permanent.



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Hon. Mr Justice Daniel Goundar

Solicitors:

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