

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 386 of 2022

BETWEEN: STATE

PROSECUTION

A N D: PONIPATE NAQAU

ACCUSED PERSON

Counsel : Mr. J. Singh for the State
Ms. L. David for Accused

Date of Sentence : 21st December 2022

SENTENCE

1. Mr. Ponipate Naqau, you pleaded guilty to one count of Sexual Assault, contrary to section 210 (1) (a) of the Crimes Act and one count of Rape, contrary to Section 207 (1) (2) (b) of the Crimes Act. The particulars of the offences are:

Count 1

Statement of Offence

SEXUAL ASSAULT: *Contrary to Section 210 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

PONIPATE NAQAU on 30th October 2022 at Nakasi in the Central Divison unlawfully and indecently assaulted **MELENIA UCUUCU** with by squeezing her breasts.

Count 2

Statement of Offence

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

Particulars of Offence

PONIPATE NAQAU on 30th October 2022 at Nakasi in the Central Divison penetrated the vagina of **MELENIA UCUUCU** with his fingers without her consent.

2. Satisfied by the fact that you have fully comprehended the legal effect of your pleas and that your pleas were voluntary and free from influence, I now convict you of these two offences as charged in the Information.
3. According to the Summary of Facts, you had touched and squeezed the breast of the Complainant on the 30th of October 2022, when she was sleeping. You then penetrated her vagina with your fingers without her consent. You are related to the Complainant as her uncle.
4. Rape is one of the most humiliating and distressing crimes. It violates the physical self of a person and destroys the personal dignity and self-autonomy of a person. Therefore, Rape is a serious offence.
5. The primary purpose of this sentence is 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 from offenders of this nature.

6. The maximum sentence for Rape is life imprisonment. The tariff for the offence of Rape involving an adult victim ranges from seven (07) years to fifteen (15) years of imprisonment period. The maximum penalty for Sexual Assault is ten years imprisonment. The tariff for the offence of Sexual Assault ranges from two (02) years to eight (08) years imprisonment.
7. Both of these offences are founded on the same series of offending. Therefore, the Court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
8. You found an opportunity when the Complainant had no option of escaping or resisting your sexual advancement to unleash this sexual attack on the Complainant. She was sleeping when you approached her to commit this crime. Therefore, this is an opportunistic crime. The victim impact report states the Complainant is experiencing adverse emotional and psychological effects due to this crime. Given these reasons, I find the level of culpability and harm in these offences are substantially high.
9. You have blatantly breached the Complainant's trust in you as an elderly relative. The Complainant is twenty-one years old, and you are 50 years old at the time of this offence. The age difference between you and the Complainant is substantially high. I find these facts as aggravating factors.
10. The learned Counsel for the Defence submitted your personal and family background, which I do not find any mitigatory value.
11. The learned Counsel for the Defence submitted that you are a first offender; hence, you are entitled to a substantive discount. Moreover, you are a church Pastor. Your previous good character and your position in society as a Pastor would have allowed you to move around freely in the community without any suspicion of risk. The community has perceived you as a man of good character and allowed you to move in the community freely. Accordingly, I do not find your previous good character has any significant mitigatory value. Hence, you are only entitled to a meagre discount for your previous good character.

12. You pleaded guilty to these offences at the first available opportunity. Moreover, you admitted your responsibilities for committing these offences in your caution interview. In doing that, you expressed remorse and repented for committing this crime. Therefore, you are entitled to a substantial discount for your early plea of guilty.
13. Having taken into consideration the above-discussed reasons, I sentence you to a period of eight (08) years imprisonment as an aggregate sentence.
14. Having considered the seriousness of this crime, the purpose of this sentence, and your age, six (06) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for six (06) years under Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

15. Accordingly, I sentence you to a period of **eight (08) years** imprisonment as an aggregate sentence for one count of Rape, contrary to section 207 (1) and (2) (b) of the Crimes Act, and one count of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. Moreover, you are not entitled to parole for **six (06) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

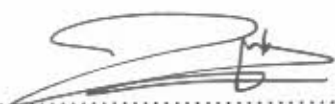
Actual Period of the Sentence

16. You have been in remand custody for this case for over one month. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider two (2) months as a period of imprisonment you have already served.
17. Accordingly, the actual sentencing period is **seven (07) years and ten (10) months** imprisonment with a non-parole period of **five (05) years and ten (10) months**.

18. 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 Permanent Domestic Violence Restraining Order against you with standard non-molestation conditions pursuant to sections 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 suspends 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.

19. Thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

21st December 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.