

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 17 of 2021

STATE

V

VERETI TIKODRAMAI

Counsel : Ms. Saini Naibe for the State
Mr. Paula Gade with Ms. Keli Vulimainadave for the Accused

Dates of Trial : 16-18 November 2022

Judgment : 22 February 2023

Sentence Hearing : 13 March 2023

Sentence : 30 March 2023

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "KLLL".

SENTENCE

[1] Vereti Tikodramai, as per the Amended Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

COUNT 1

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

VERETI TIKODRAMAI, between the 1st day of July 2020 and the 31st day of December 2020, at Vatukoula, in the Western Division, unlawfully and indecently assaulted **KLLL**, by touching her breasts.

COUNT 2

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

VERETI TIKODRAMAI, between the 1st day of July 2020 and the 31st day of December 2020, at Vatukoula, in the Western Division, on an occasion different from Count 1, unlawfully and indecently assaulted **KLLL**, by touching her breasts.

COUNT 3

Statement of Offence

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

Particulars of Offence

VERETI TIKODRAMAI, between the 1st day of July 2020 and the 31st day of December 2020, at Vatukoula, in the Western Division, penetrated the vagina of **KLLL**, with his tongue, without her consent.

COUNT 4

Statement of Offence

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

Particulars of Offence

VERETI TIKODRAMAI, between the 1st day of July 2020 and the 31st day of December 2020, at Vatukoula, in the Western Division, penetrated the vagina of **KLLL**, with his finger, without her consent.

COUNT 5

Statement of Offence

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

Particulars of Offence

VERETI TIKODRAMAI, between the 1st day of July 2020 and the 31st day of December 2020, at Vatukoula, in the Western Division, had carnal knowledge of **KLLL**, without her consent.

- [2] You pleaded not guilty to the charges and the matter proceeded to trial. The ensuing trial was held over 3 days. The complainant (KLLL), and her neighbour, Sainimili Kidimoce, testified on behalf of the prosecution.
- [3] At the end of the prosecution case this Court decided that there was no relevant or admissible evidence to establish that you had committed the offence you are charged with in Count 5. Accordingly, you were found not guilty and acquitted of the said charge.
- [4] However, this Court decided to call for your defence in respect of Counts 1, 2, 3 and 4. You exercised your right to remain silent.
- [5] At the conclusion of the evidence and having reviewed the totality of the evidence, this Court found you guilty and convicted you of Counts 1-4.
- [6] It was proved during the trial that, between the 1 July 2020 and the 31 December 2020, at Vatukoula, you unlawfully and indecently assaulted the complainant by touching her breasts.
- [7] It was further proved during the trial that, between the 1 July 2020 and the 31 December 2020, on an occasion different from Count 1, at Vatukoula, you unlawfully and indecently assaulted the complainant by touching her breasts.
- [8] It was proved during the trial that, between the 1 July 2020 and the 31 December 2020, at Vatukoula, you penetrated the vagina of the complainant with your tongue, without her consent.
- [9] And finally it was proved during the trial that, between the 1 July 2020 and the 31 December 2020, at Vatukoula, you penetrated the vagina of the complainant with your finger, without her consent.
- [10] It is an agreed fact that the complainant's and your residence is in a close proximity (walking distance) to each other. It is also an agreed fact that you usually went to fetch water from the complainant's residence at Vatukoula back in the year 2020. It is further agreed that the complainant is related to you through her paternal links.

[11] As per her birth certificate tendered to Court as Prosecution Exhibit PE1, the complainant's date of birth is 23 May 2007. Therefore, at the time you committed these offences on her she was just above the age of 13 years. At the time she testified in Court she had turned 15.

[12] The complainant clearly testified to all the aforesaid incidents. I have referred to the complainant's evidence at length in my judgment.

[13] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) The only purposes for which sentencing may be imposed by a court are —

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

[14] I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to punish and to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

[15] Vereti Tikodramai, I will first deal with the two counts of Rape that you have been found guilty and convicted of (Counts 3 and 4). The offence of Rape in terms of Section 207(1) of the Crimes Act No. 44 of 2009 ("Crimes Act") carries a maximum penalty of imprisonment for life.

[16] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of **Mohammed Kasim v. The State** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

“...It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage.”

- [17] In *The State v Lasaro Turagabeci and Others* (unreported) Suva High Court Crim. Case No. HAC0008.1996S; Pain J said:

“The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences.”

- [18] In the case of *State v. Marawa* [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

“Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences”.

*“A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public’s disapproval and serves as a warning to others who may hitherto regard such acts lightly. One must not ignore the validity of the imposition of condign punishment for serious crime. Lastly the sentence is set in order to protect women from such crimes: **Roberts and Roberts** (1982) 4 Cr. App R(S) 8; **The State v Lasaro Turagabeci and Others** (unreported) Suva High Court Crim. Case No. HAC0008.1996S.”*

- [19] His Lordship Justice Daniel Goundar, in the case of *State v. AV* [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

“...Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences”.

- [20] 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.”

[21] In the case of ***Felix Ram v. The State*** [2015] FJSC 26; CAV 12 of 2015 (23 October 2015); His Lordship Chief Justice Anthony Gates laid down the following factors that a Court should take into account when sentencing an offender who has been convicted of Rape:

“(a) whether the crime had been planned, or whether it was incidental or opportunistic;

(b) whether there had been a breach of trust;

(c) whether committed alone;

(d) whether alcohol or drugs had been used to condition the victim;

(e) whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;

(f) whether the impact on the victim had been severe, traumatic, or continuing;

(g) whether actual violence had been inflicted;

(h) whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;

(i) whether the method of penetration was dangerous or especially abhorrent;

(j) whether there had been a forced entry to a residence where the victim was present;

(k) whether the incident was sustained over a long period such as several hours;

(l) whether the incident had been especially degrading or humiliating;

(m) If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;

(n) Time spent in custody on remand;

(o) Extent of remorse and an evaluation of its genuineness;

(p) If other counts or if serving another sentence, totality of appropriate sentence.”

[22] His Lordship Justice Goundar in **State v Apisai Takalaibau** – Sentence [2018] FJHC 505; HAC 154 of 2018 (15 June 2018); making reference to statistics of Aggravated Burglary cases filed in the High Court in 2017 and 2018, stated that “A factor that influences sentencing is the prevalence of the offence in the community.....The more prevalent is an offence, the greater the need is for deterrence and protection of the community.”

[23] This has been affirmed by the Supreme Court in **Alfaaz v. State** [2018] FJSC 17; CAV0009.2018 (30 August 2018); where it was recognized that the prevalence of cases of child rape calls for harsher punishments to be imposed by Courts. Their Lordships held:

“According to the statistics released by the Director of Public Prosecutions Office it appears that a number of rape victims as well as victims under the age of 18 years and victims in domestic relationships or relatives were also victims of other serious sexual offences. The rape of children is a very serious offence and it is very frequent and prevalent in Fiji. The courts must impose harsh penalties dictated by the legislation. The courts should not leniently look at this kind of serious cases of rape of children of tender years when punishing the offenders.”

[24] In the case of **Anand Abhay Raj v. The State** [2014] FJSC 12; CAV 0003 of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathya Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.

[25] However, in the case of **Aitcheson v State** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); His Lordship Chief Justice Gates stated that the sentencing tariff for the Rape of a juvenile should now be increased to between 11 and 20 years imprisonment. His Lordship held:

*“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.”*

[26] In **Aitcheson v State** (*Supra*), it was said:

“[72] Undoubtedly it has been accepted by the society that rape is the most serious sexual offence that could be committed on a woman. Further

it is said that; "A murderer destroys the physical body of his victim; a rapist degrades the very soul of a helpless female."

[27] In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v. State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."

[28] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, I commence your sentences at 11 years imprisonment for the two counts of Rape.

[29] The aggravating factors are as follows:

- (i) You are very well known to the complainant and her family. The complainant is related to you through her paternal links. The complainant used to call you "Tai Vereti", meaning grand-father Vereti. The complainant's residence and your residence are in a close proximity (walking distance) to each other. You usually went to fetch water from the complainant's residence at Vatukoula. Thus the complainant trusted you. Being so, you should have protected the complainant. Instead you have breached the trust expected from you and the breach was gross.
- (ii) There was a large disparity in age between you and the complainant. The complainant was only 13 years of age, at the time you committed these offences on her. At the time of the offending you were 73 years of age. Therefore, you were over 60 years older than the complainant at the time.
- (iii) You took advantage of the complainant's vulnerability, helplessness and naivety.
- (iv) You have exposed the innocent mind of a child to sexual activity at such a tender age, and thereby robbed the complainant of her innocence.
- (v) You are now convicted of multiple offending.

[30] Considering the aforementioned aggravating factors, I increase your sentences by a further 5 years. Now your sentences are 16 years imprisonment for each of the counts of Rape.

[31] Vereti Tikodramai, you are now 75 years of age (Your date of birth being 19 April 1947). In a few days from now, you will be turning 76. You are said to be a widower with three children, the eldest being 45 years old and the youngest being 35 years old. It is said that you are now retired and was residing at Church Street, Vatukoula, Tavua, prior to being remanded for this case. Unfortunately, these are strictly personal circumstances and cannot be considered as mitigating circumstances.

[32] As per the Antecedent Report filed, it is noted that there are four previous convictions recorded against you. You have admitted to the said previous convictions. The last conviction dates back to 5 October 2013, where you had been sentenced by the Tavua Magistrate's Court (Case No. C.F. 116 of 2010), to 3 years imprisonment, with a non-parole period of 2 years, for the offence of Indecent Assault.

[33] In terms of Section 3 of the Rehabilitation of Offenders (Irrelevant Convictions) Act No. 11 of 1997 [Rehabilitation of Offenders (Irrelevant Convictions) Act], the term "irrelevant conviction" has been defined in the following manner:

3. For the purposes of this Act, a conviction is irrelevant:-

(a) where there is no direct relationship between that conviction and the particular matter in respect of which it is sought to take that conviction into account; or

(b) if the rehabilitation period has expired.

[34] Section 4 of the Act broadly defines what "direct relationship" means; while Section 5 of the Act defines the term "rehabilitation period" as follows:

5.-(1) Notwithstanding subsection (2), the rehabilitation period applicable to a conviction is:

(a) in case of a person who is seventeen years or over, ten years; or

(b) in case of a person who is under the age of seventeen years,-

(i) seven years, for a term of imprisonment or detention not exceeding two years under section 30 or 31 of the Juveniles Act; or

(ii) ten years, for a term of imprisonment or detention exceeding two years under section 31 of the Juveniles Act.

(2) Subject to subsection (1), the rehabilitation period applicable to Part III, is five years.

[Emphasis is my own].

[35] Section 6(1) of the Rehabilitation of Offenders (Irrelevant Convictions) Act provides:

6.-(1) The rehabilitation period commences:-

(a) on the date of conviction; or

(b) where a custodial sentence was imposed, on the date: on which the convicted person was unconditionally released from imprisonment; or

(c) where the release of a convicted person from detention is subject to a condition or other penalty imposed by the Court, when the condition or that other penalty is fulfilled.

[36] You would have been released after serving the 3 years imprisonment, with a non-parole period of 2 years, imposed by the Tavua Magistrate's Court, around October 2015 (considering the remissions you would have been entitled to). Therefore, in terms of the Rehabilitation of Offenders (Irrelevant Convictions) Act, your rehabilitation period would have commenced around that time.

[37] You have committed the offences you have been convicted for in this case during the period 1 July 2020 and the 31 December 2020, which is clearly within the rehabilitation period of 10 years. Therefore, unfortunately, Court cannot consider you as a person of previous good character or grant you any discount in lieu of this fact.

[38] Furthermore, I find no other mitigating circumstances in this case to grant you any discount. As such, your sentences will remain at 16 years imprisonment for Counts 3 and 4.

[39] I will now deal with the offence of Indecent Assault (Counts 1 and 2). The offence of Indecent Assault in terms of Section 212 of the Crimes Act carries a maximum penalty of 5 years imprisonment.

[40] Her Ladyship Madam Justice Shameem in *Ratu Penioni Rokota v. State* [2002] FJHC 168; HAA 68J of 2002S (23 August 2002); held that the applicable tariff for the offence of Indecent Assault range from 12 months to 4 years imprisonment. Madam Justice Shameem said:

"..... Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty which saves the victim the trauma of giving evidence.

These are the general principles which affect sentencing under section 154 of the Penal Code. Generally, the sentence will fall within the tariff, although in particularly serious cases, a five year sentence may be appropriate. A non-custodial sentence will only be appropriate in cases where the ages of the victim and the accused are similar, and the assault of a non-penetrative and fleeting type. Because of the vast differences in different types of indecent assault, it is difficult to refer to any more specific guidelines than these.”

[41] This was followed by His Lordship Justice Vinsent Perera in ***State v. Mohammed Zubair*** [2017] FJHC 895; HAC 425 of 2016 (24 November 2017).

[42] Accordingly, considering the objective seriousness of the offences and taking into consideration the nature and the gravity of the offences and your culpability and degree of responsibility for the offences, and also taking into consideration the aggravating factors, I impose on you a sentence of 2 years’ imprisonment for the first and second counts of Indecent Assault.

[43] In the circumstances, your sentences are as follows:

Count 1- Indecent Assault contrary to Section 212 (1) of the Crimes Act – 2 years’ imprisonment.

Count 2 – Indecent Assault contrary to Section 212 (1) of the Crimes Act – 2 years’ imprisonment.

Count 3- Rape contrary to Section 207 (1) and 2(b) of the Crimes Act – 16 years’ imprisonment.

Count 4 – Rape contrary to Section 207 (1) and 2(b) of the Crimes Act – 16 years’ imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 16 years.

[44] Accordingly, I sentence you to a term of 16 years imprisonment.

[45] The next issue for consideration is whether this Court should grant you any concessions due to your current advanced age of 75 years.

[46] Her Ladyship Madam Justice Nazhat Shameem in the case of ***Rokota v. The State*** (*supra*) held as follows:

“...However, the Appellant is 64 years old. There are special sentencing principles for the sentencing of the elderly, particularly those of previous good character.”

[47] Making reference to Principles of Sentencing (2nd Edition), by D. A. Thomas, Her Ladyship said:

“Recognition of age as a mitigating factor does not mean that imprisonment should never be imposed on elderly offenders, and the Court has upheld sentences of imprisonment on men in their seventies. It is however a long-established principle that a sentence should normally be shortened so as to avoid the possibility that the offender will not live to be released.”

[48] However, considering all the facts and circumstances of this case, especially the fact that the complainant was known to you and trusted you and was merely 13 years of age at the time of the incidents, I am not inclined to reduce the primary sentence or head sentence I am imposing on you.

[49] Accordingly, I sentence you to a term of 16 years’ imprisonment. However, in determining the non-parole period to be imposed on you, I have given due consideration to your advanced age. Accordingly, pursuant to the provisions of Section 18 (1) of the Sentencing and Penalties Act, I fix your non-parole period as 6 years’ imprisonment.

[50] Considering your advanced age, I order the Correction Authorities to ensure that you are provided proper facilities while you are serving your sentence of imprisonment.

[51] Section 24 of the Sentencing and Penalties Act reads thus:

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

[52] You were arrested for this case and produced in the Magistrate’s Court of Rakiraki on 13 January 2021 and remanded into custody. Although you were granted bail by the High Court on 6 April 2021, you were unable to fulfil the said bail conditions, and as such, have remained in custody since 13 January 2021. That is a period of 2 years 2 and a half months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 2 years 3 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[53] In the result, your final sentence is as follows:

Head Sentence - 16 years’ imprisonment.

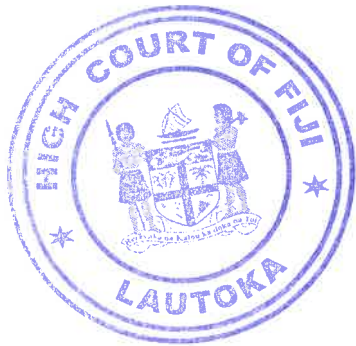
Non-parole period - 6 years’ imprisonment.

Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 13 years’ and 9 months imprisonment.

Non-parole period - 3 years’ and 9 months imprisonment.

[54] You have 30 days to appeal to the Court of Appeal if you so wish.





Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT LAUTOKA

Dated this 30th Day of March 2023

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