

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 78 of 2021

STATE

vs.

MITIELI ROKOLACADAMU

Counsel: Ms. S. Bibi & Ms. P. Kumar for the State
Trial in Absentia [Unrepresented]

Date of Judgment: 29th March 2023

Date of Sentence/Mitigation Submission: 11th April 2023

Date of Sentence: 13th April 2023

SENTENCE

(The name of the victim is suppressed and will be referred to as "MN.")

Introduction

1. Mr. Mitieli Rokolacadamu, was tried in absentia and convicted on the 29th of March 2023 of two counts of Rape contrary to Section 207 (1) and (2)(a) and a count of Rape contrary to Section 207 (1) and (2)(b) of the Crimes Act, 2009 by this Court after trial of which I presided. The prosecution tendered written submissions on sentencing. Accordingly I will endeavor to determine a just sentence without in any way considering the fact of the absconding.

Circumstances of the Offending

2. The Accused Mr. Mitieli Rokolacadamu was 19 years of age and related to the victim MN. Though young in age the Accused is a cousin of MN's father and is an uncle so to say. The victim was a young going girl of 15 years of age. One afternoon the Accused just walks into her house and seeing that she was alone bluntly and abruptly approached her and asks her if he could *do it*, meaning to have sexual intercourse with her. MN was frightened, overawed and was speechless. The Accused then swiftly embarks upon kissing and touching her and then takes by her hand to the toilet within the house and with scant regard to her resistance commits at least three acts of penetration of her vagina and anus with his penis and tongue and rapes her. The Accused appears to have within a space of two hours molested and sexually abused the victim inter alia engaging in several forms of penetrative sexual acts.
3. In short, the Accused had taken advantage of MN's timidity, innocence and his familial connection to force himself on this young girl to satisfy his varied sexual desires within the victim's own home. After multiple sexual acts being committed the Accused did not leave but had the audacity to remain in the house until the victim's mother arrived. The traumatized MN was virtually hiding in the rear of the house until her mother arrived. The victim MN was so frightened and traumatized that she was afraid even to tell her mother that evening. However, the following morning she in her own subtle way informs her teacher of this harrowing incident. These are the brief facts of this offending.

Sentencing Regime

4. The maximum penalty prescribed for Rape contrary to Section 207 (1) and (2) (a) / (b) 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 this 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 (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.”

Objective Seriousness, Culpability and Harm of the Offending

8. 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.”

9. The facts and figures for the first quarter of 2023 made public by the DPP's office as well as the Fiji Police Force confirm an appreciable increase in child abuse and child rape complaints. In a majority of such allegations the perpetrators are known adults with familial connections. Thus, 12 years since Justice Madigan's similar observation made in **State v. Tauvoli** (supra), rape of children and pubescent juveniles by known adults is a serious and perennial social issue prevalent in Fiji. The circumstances demand and it is now necessary to impose stringent and even prohibitive sentences that will inhibit and deter any would be perpetrators of child sexual abuse and also protect the children and the pubescent.
10. Rape is a physical invasion committed on the victim under 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.
11. Mr. Mitieli Rokolacadamu was found guilty of a sexual crimes of utmost gravity. The offences involve three acts of sexual penetration on the same and abuse of a vulnerable pubescent girl of 15 years. There are many features that aggravate the culpability and harm factors. You subjected her to repeated acts of penetration of both the anus and vagina. The victim was coerced and intimidated to facilitate the commission of these offences and to make the likelihood of her reporting them remote. The complainant felt both fear and

misguided loyalty to you. She was reluctant to tell her mother promptly, of what you did to her.

12. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to which MN has been emotionally affected by this unwelcome sexual encounter and that she suffers from feelings of loneliness, low self-esteem, self-blame and isolation. She is also scared to be alone. Since this incident she had left the island she lived then, due to fear and the embarrassment. She has also restricted social interactions. Then due to the stigma she was compelled to leave school. Since the date of the offence MN had been having nightmares, insomnia and flashbacks so much so that she virtually re-lives the entire ordeal all over again at such times. This had led to her having constant panic attacks leading to anxiety and short temper.
13. It is clear from the victim impact statement that, this offending has had a very significant and long-lasting psychological impact on the minor that requires consideration in sentencing.
14. The aggravating factors are as follows.
 - (i) Serious Breach of Trust. The convict is an older relative who is MN's father's cousin. He occupied a position of some power and trust in relation the victim. Such a position of power over the other who is a young child render such sexual activity morally wrong and punishable within the realms of the criminal law. MN was vulnerable to the Accused's seniority in age and familial connection who was in a position of trust to some extent. The culture and the traditions of the Fijian society expects elders to protect young children in the community and the elders do enjoy the respect of the young. Mr. Mitieli taking advantage of this culture sexually exploited MN a young adolescent child. The rape of a child is an appalling and perverse use of male power exploiting to the full the position of power which Mr. Mitieli held over her. She was raped in the safety of her own home so to say, by a person from whom

she was entitled to expect protection and care. Mr. Mitieli has violated the trust which the complainant and her parents placed he and abused that position of trust.

- (ii) There was disparity in age between you and the complainant. The complainant was 15 years old at the time you committed these offences on her and you were around 20 years in age.
- (iii) You sexually abused and raped her multiple times taking advantage the complainant's vulnerability, helplessness and innocence and you have caused untold misery to her and her family.
- (vi) 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 and a human being and her right to have a happy, unmolested and peaceful childhood.

The mitigating factors are as follows:

- (i). Mr. Mitieli Rokolacadamu is now around 22 years of age.
- (ii). There is no Antecedent Report filed, As such I will proceed on the premise that Mr. Mitieli Rokolacadamu has no previous convictions and consider him a person of previous good character.

Sentence

15. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

16. The three counts of Rape for which Mr. Mitieli Rokolacadamu was convicted are offences founded on the same facts and are of similar character. In accordance with section 17 of the

Sentencing and Penalties Act, I consider it just and appropriate to impose an aggregate sentence for the offences.

17. These offences are so serious that only a custodial sentence can be justified. The least possible sentences I can impose, having regard to the seriousness, aggravating and mitigating factors of the case, will be as follows. As for the aggregate sentence, I pick and start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors, making a total sentence 16 years imprisonment. As for the mitigating factors I will I deduct 2 years leaving a balance of 14 years imprisonment.
18. I am satisfied that the Accused was manipulative and somewhat of a sexual predator of a prepubescent young child. 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 and in the circumstances of this offending in my judgment, justice and protection of the public can and should be achieved by such a long sentence.
19. In view of the reasons discussed above, I sentence Mr. Mitieli Rokolacadamu to 14 years imprisonment as an aggregate sentence for the Rape counts for which he stands convicted.

Non-Parole Period

20. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that ten (10) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
21. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim the purpose of this sentence is to punish the Accused in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to clearly manifest that the court and the community denounce what Mr. Mitieli Rokolacadamu did to the complainant and in a manner which is just in all the circumstances of the case.

Head Sentence

22. Accordingly, I sentence Mr. Mitieli Rokolacadamu to a period of fourteen (14) years imprisonment for the counts of Rape as charged and convicted. However, he is not entitled to parole for ten (10) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

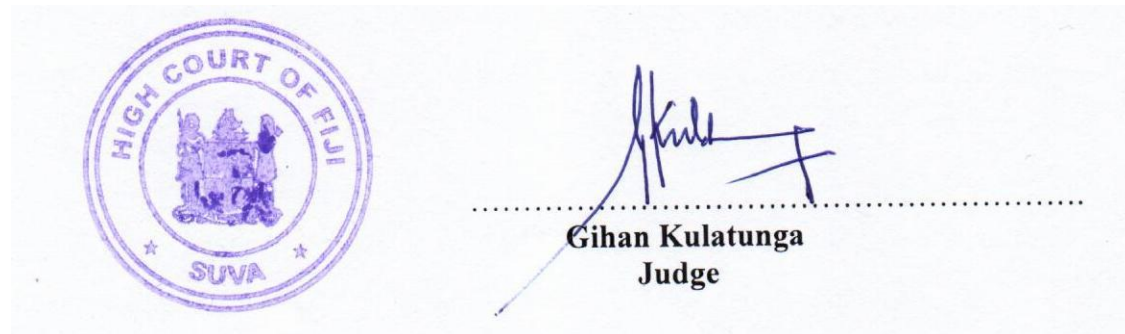
Actual Period of the Sentence

23. Mr. Mitieli Rokolacadamu was arrested and remanded for this case on 10th March 2021 and was in remand up to 11th April 2021 and was in custody for a period of almost 1 month. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 1 month be considered as imprisonment that he has already served.

24. Accordingly, the actual sentence is a period of is thirteen (13) years and eleven (11) months imprisonment with a non-parole period of nine (09) years and eleven (11) months. This sentence will be effective from the date of arrest of the Accused who is now absconding.

25. The complainant's name is permanently suppressed to protect her privacy.

26. The Accused has thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Suva

13th April, 2023.

Solicitors

Office of the Director of Public Prosecutions for the State.
Accused Absent and Unrepresented