

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 35 of 2022**

**BETWEEN:            STATE**

**AND:                    JOSEFA DRUGU**

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

**Date of Plea:            2<sup>nd</sup> August 2023**

**Date of Sentence:    21<sup>st</sup> September 2023**

**SENTENCE**

1.     The victim has been granted name suppression and will be referred to only by her initials LA.
2.     Josefa Drugu you were initially charged with the following offences in the Information filed in Court: -

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**JOSEFA DRUGU** between the 1<sup>st</sup> of January 2021 and the 31<sup>st</sup> January 2021 at Lomate, Bua in the Northern Division, unlawfully and indecently assaulted **LA**, by fondling with her breasts

**COUNT TWO**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) AND (2) (b) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**JOSEFA DRUGU** between the 1<sup>st</sup> of January 2021 and the 31<sup>st</sup> of January 2021 at Lomate Bua, in the Northern Division, penetrated the vagina of **LA** a child under the age of 13 years, with his finger.

**COUNT THREE**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) AND (2) (b) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**JOSEFA DRUGU** between the 1<sup>st</sup> of January 2021 and the 31<sup>st</sup> of January 2021 at Lomate Bua, in the Northern Division, penetrated the vagina of **LA**, a child under the age of 13 years, with his tongue.

**COUNT FOUR**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) AND (2) (b) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**JOSEFA DRUGU** between the 1<sup>st</sup> of January 2021 and the 31<sup>st</sup> of January 2021 at Lomate Bua, in the Northern Division, had carnal knowledge of **LA**, a child under the age of 13 years.

**COUNT FIVE**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) AND (2) (b) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**JOSEFA DRUGU** between the 1<sup>st</sup> of January 2021 and the 31<sup>st</sup> of January 2021 at Lomate Bua, in the Northern Division had carnal knowledge of **LA**, a child under the age of 13 years.

**COUNT SIX**

*Statement of Offence*

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

*Particulars of Offence*

**JOSEFA DRUGU** between the 1<sup>st</sup> of January 2021 and the 31<sup>st</sup> January 2021 at Lomate, Bua in the Northern Division, unlawfully and indecently assaulted **LA**, by fondling with her breast.

**COUNT SEVEN**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) AND (2) (b) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**JOSEFA DRUGU** between the 1<sup>st</sup> of January 2021 and the 31<sup>st</sup> of January 2021 at Lomate Bua, in the Northern Division, penetrated the vagina of **LA**, a child under the age of 13 years, with his tongue.

**COUNT EIGHT**

*Statement of Offence*

**RAPE**: Contrary to section 207 (1) AND (2) (b) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**JOSEFA DRUGU** between the 1<sup>st</sup> of January 2021 and the 31<sup>st</sup> of January 2021 at Lomate Bua, in the Northern Division had carnal knowledge of **LA**, a child under the age of 13 years.

3. In this matter you have initially pleaded guilty to Counts 1, 3, 6, 7 and 8 on the 11<sup>th</sup> of October 2022 and you were sentenced by the Court on the 14<sup>th</sup> of October 2022 to the following sentence –
- (i) Counts 3, 7 and 8 for the offence of Rape – 11 years imprisonment on each count.
  - (ii) Counts 1 and 6 for the offence of Sexual Assault – 3 years imprisonment on each count.
  - (iii) The sentences are to run concurrently – a total of 11 years imprisonment with a non-parole period of 8 years.
  - (iv) You have spent a total 6 months in remand and this remand period in remand will be deducted from the sentence as time already served.
  - (v) The final sentence handed down was imprisonment for 10 years 6 months’ imprisonment with a non-parole period of 7 years and 6 months imprisonment.
  - (vi) There will be a permanent Domestic Violence Restraining Order – Standard Non Molestation conditions with additional Non-Contact orders for the protection of the victim.
  - (vii) The complainant’s name is permanently suppressed to protect her privacy.
  - (viii) 30 day to appeal to the Court of Appeal.
4. Josefa Drugu you pleaded not guilty to the remaining counts 2, 4 and 5 and the matter proceeded to pretrial conference.

5. The Court then fixed 3 days for the Trial on the remaining 3 counts from the 2<sup>nd</sup> to the 4<sup>th</sup> of August 2023.
6. On the first day of the Trial, the 2<sup>nd</sup> of August, Josefa Drugu through your counsel, you advised the Court that you now wished to take a progressive approach and plead guilty to the 3 counts left on the Information.
7. The following Summary of Facts was then outlined to you: -

**Summary of 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) Josefa Drugu has pleaded guilty to 3 counts of Rape (Counts 2, 4 and 5 on the Information).
- c) The first incident occurred sometime in January 2021, the complainant LA, was sleeping in her room in the middle of the night when she felt someone touching her breasts. The complainant woke up and saw someone standing over her, she then called out "Bu" meaning grandfather, the person responded and the complainant realised that it was the Accused.
- d) The Accused then removed the complainant's clothes and after doing so, he took off his clothes. He then opened the complainant's legs where he inserted his finger into the complainant's vagina. The complainant cried out in pain and the Accused covered her mouth with his right hand and continued to insert his finger into the complainant's vagina. The complainant cried and begged the Accused to stop however he did not. Once the Accused was done he then left the room.
- e) The day after the first incident occurred, the Accused came to the complainant's room again in the middle of the night whilst she was sleeping. When the

complainant woke up, she saw that it was the Accused who was standing beside her bed. The complainant asked him why he was in her room and told him to go back to his room. The Accused then replied and said he will only go back to his room after touching her “private part.”

- f) The Accused then removed the complainant’s underwear and spread her legs open where he inserted his finger into her vagina. The Accused then took off his pants and laid on top of the complainant where he inserted his penis into the complainant’s vagina. The complainant tried to push the Accused away however, he held the complainant’s hands down. The Accused covered the complainant’s mouth before he ejaculated in her vagina and then got up and left.
- g) The complainant stated that after the above two incidents happened, the Accused would come into the room whenever her parents were not at home and he would have sexual intercourse with the complainant where he would insert his penis into her vagina.
- h) The complainant LA was 12 years old when the above incidents occurred and her date of birth was 7<sup>th</sup> January 2010. The birth certificate was tendered into evidence.
- i) The next day on the 9<sup>th</sup> of April 2022, the complainant ran away to her aunt’s place. The complainant told her aunt Maria Disamu what the Accused did to her and the complainant asked her aunt if she could inform her parents what the Accused did to her.
- j) On Sunday the 10<sup>th</sup> April 2022, Maria Disamu 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.
- k) On 19<sup>th</sup> April 2022 the complainant was taken to the Nabouwalu Police Station where he was interviewed under caution. The Accused admitted to the allegations and the Accused was charged thereafter.

- 1) The Accused admitted to inserting his fingers and penis into the complainant's vagina in Question and Answers 63 to 68; 71 to 74; 76; 78 to 79 and 95 of his caution interview.
8. I am satisfied that the Summary of Facts sets out all of the elements of the three counts of the offence of Rape to which you have pleaded guilty. I am also satisfied that your guilty plea is an unequivocal plea and you have admitted the summary of the facts without reservation therefore you are convicted on the remaining counts of Rape, namely counts 2, 4 and 5.
9. You are currently serving a term of imprisonment imposed on the 14<sup>th</sup> of October 2022, on this same Information therefore you will be considered as a first offender.
10. You have pleaded guilty and, although it is a late plea, coming on the first day of Trial, nevertheless you will get credit for the same.

### **The Plea in Mitigation**

11. In mitigation your counsel offered the following submissions: -
  - (i) You are 62 years of age, a widower with no children. You reside in Lomate settlement in Vuya, Bua with your nephew and his family (the complainant's parents).
  - (ii) You used to be actively involved in village activities at your village, Vuya, Bua.
  - (iii) You explain that you committed these offences as a result of an uncontrollable sexual urge which you found difficult to suppress. You understand that your actions were inexcusable and intolerable and you deeply regret it hence the reason for taking a progressive approach in this matter.
  - (iv) You are an elderly citizen and you have entered a guilty plea to counts 2, 4 and 5 on the Information.

- (v) By pleading guilty you have saved the Court's time and expenses and also prevented the victim from reliving her experience in Court.
- (vi) You seek the Court's mercy and ask the Court to give a reduction for the guilty plea even though it is not an early plea.
- (vii) You seek the Court's forgiveness and promise not to reoffend, seeking an opportunity to reform. Counsel submits that you still have a chance to rehabilitate yourself.
- (viii) You have spent time in remand, a total of 1 year 5 months and 22 days in remand.
- (ix) Counsel therefore submits that the Court must impose a fair and just sentence that reflects the circumstances of the offending, mitigation and the circumstances of the Accused and the need for rehabilitation for the Accused.
- (x) Counsel acknowledges that the purposes of sentencing in like-minded matters is to deter and denounce such offenders and the Courts have so often condemned such offending due to its prevalence in our societies; the Accused prays that he be given a lenient sentence which allows him a second chance at life.

### **Sentencing Submissions**

12. The State has also filed Sentencing Submissions as follows: -

- (i) Section 4 of the Sentencing and Penalties Act requires the Court to have regard to the maximum penalty prescribed for the offence and current sentencing practice and applicable guidelines issued by the Courts.
- (ii) The Court is also required to consider the nature and gravity of the offences and impact or harm the crimes may have had on the victim.

- (iii) The maximum sentence for Rape is life imprisonment and the tariff for child rape is between 11 to 20 years imprisonment – Aitcheson -v- State [2018] FJSC 29; CAV 12 of 2018 (2 November 2018).
- (iv) The Courts will also reserve the highest punishment for offenders of sexual assault on children – Alfaaz -v- State [2018] FJSCC 17; CAV 9 of 2018 (30 August 2018).
- (v) The State also cites the cases of State -v- Natadra [2019] FJHC 454; HAC 137 of 2017 (17<sup>th</sup> May 2019); and Ram vs State [2015] FJSC 26; CAV 12 of 2015 (23 October 2015).
- (vi) The State offers the following as aggravating factors – the child victim’s special vulnerability as a child; the disparity in the age of the victim and the Accused is wide – an age difference of 52 years.
- (vii) The impact of the crimes on the victim was traumatic and it is continuing. The complainant has also submitted a Victim Impact Statement setting out how the actions of the Accused has and continues to affect her.
- (viii) The Accused has spent time in remand, and he has no previous convictions therefore this should be reflected in his sentence.
- (ix) The State submits that a non-parole period must be imposed. The State further submits that the Court must take into consideration the gravity of the offences committed as well as the aggravating factors identified above.
- (x) The State concedes that the Accused has pleaded guilty although it is a late plea therefore the deduction should be lower than would normally be the case for an early guilty plea.

- (xi) Finally, the State submits that any sentence handed down should reflect the gravity of the unlawful acts committed by the Accused. Such a sentence ought to be made concurrent to the current sentence that he is now serving.

### **Sentencing Remarks**

13. In sentencing you, the Court acknowledges that this offence is a domestic violence offence therefore I am required by section 4 (3) of the Sentencing and Penalties Act to consider the relevant factors set out therein.
14. You have been sentenced already on Counts 3, 6, 7 and 8 on the Information for the offence of Rape, therefore the sentencing remarks and analysis by my brother Justice Kulatunga are also applicable to this sentence for the remaining 3 counts of Rape.
15. 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.
16. 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 (granduncle) 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 took advantage of this rich culture and 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.
17. 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.

18. 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.”*

19. 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**

20. 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 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.”*

**Objective seriousness, culpability and harm of the offending**

21. 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.”*

22. 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.
23. 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 she was exposed to this sexual abuse, 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 her, being pressured from schoolmates, members of her community continuously questioning her of the incident and more so, as she felt so ashamed, blamed and lonely.

### **The aggravating circumstances**

24. 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**

25. The only mitigating factors that I can identify from the facts of this case are your guilty plea and your previous good conduct. The other issues identified relate to your personal circumstances and do not mitigate the offending.

### **Non-parole period**

26. 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.
27. Considering the above, I impose 9 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.

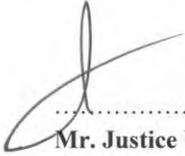
### **Sentence**

28. Josefa Drugu, 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) For the remaining 3 counts of Rape, I pick and start with a sentence of 12 years imprisonment. I add 4 years for the aggravating factors, making a total of 16 years imprisonment on each count.
  - (b) For your guilty plea I reduce your sentence by 2 years and for your previous good conduct for the past 61 years I deduct 2 years from your sentence. Thus, on counts 2, 4 and 5 – your head sentence is 12 years imprisonment.
  - (c) At the time of sentencing, you were already serving a term of imprisonment on 5 counts of this same Information and the Court had already deducted your period in remand, therefore there will be no further deduction for any period

in remand.

- (d) Josefa Drugu on the remaining three counts of Rape, I sentence you to 12 years' imprisonment with a non-parole period of 9 years' imprisonment.
- (e) This sentence is to be served concurrently with the current term of imprisonment that you are serving therefore your total period to be served is now 12 years and you will serve 9 years before you are eligible for parole. I find that this sentence addresses the serious offences committed by you on a very close relative, whilst also providing you an opportunity to rehabilitate yourself.
- (f) The final Domestic Violence Restraining Order remains in place.
- (g) The complainant's name is permanently suppressed.
- (h) 30 days to appeal to the Court of Appeal.



  
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**Mr. Justice Usaia Ratuville**  
**Acting Puisne Judge**  
**Labasa High Court**

Solicitors:

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