

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 40 OF 2022

BETWEEN: STATE

AND: SAMUELA VARURU

Counsel: Ms E Thaggard for the State
Ms M Besetimoala for the Accused

Date of Hearing: 12 October 2023

Date of Sentence: 13 October 2023

SENTENCE

1. The accused pleaded guilty to the following charges contained in the amended information dated 11 October 2023:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

SAMUELA VARURU, between the 1st of January 2021, and the 31st day of December, 2021 at Tavulomo village, Dama in the Northern Division, penetrated the vagina of **SB**, a child under the age of 13 years, with his fingers.

SECOND COUNT

Statement of Offence

ATTEMPTED RAPE: Contrary to section 44 and 208 of the Crimes Act 2009.

Particulars of Offence

SAMUELA VARURU, between the 1st of January 2021, and the 31st day of December, 2021, on a different occasion from Count 1, at Tavulomo village, Dama in the Northern Division, attempted to rape **SB**.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

SAMUELA VARURU, between the 1st of January 2021, and the 31st day of December, 2021, on a different occasion from Counts 1 and 2 above, at Tavulomo village, Dama in the Northern Division, penetrated the vulva of **SB**, a child under the age of 13 years, with his tongue.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

SAMUELA VARURU, between the 1st of January 2021, and the 31st day of December, 2021, on the same occasion as count 3 above, at Tavulomo village, Dama in the Northern Division, unlawfully and indecently assaulted **SB** by rubbing his genitalia whilst wearing his underwear, on the naked vulva of **SB**.

FIFTH COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act 2009.

Particulars of Offence

SAMUELA VARURU, between the 28th of April, 2022, at Tavulomo village, Dama in the Northern Division, assaulted **SB**, with a PVC pipe, thereby occasioning her actual bodily harm.

2. The facts in support of the charges and admitted by the accused are as follows.
3. The victim is a child. She was 12 years old in 2021 and residing at Tavulomo village, Bua. Her date of birth is 1 August, 2009.

4. The accused is the step-father of the victim. At the time of the offence the accused was 48 years old and also residing at Tavulomo village, Bua. He worked as a Machine Operator.
5. On 17 December 2020, the victim's family home was completely destroyed by Cyclone Yasa. The family had to move into a temporary shelter provided by the DISMAC team. Thereafter, the family moved to the village Hall in Tavulomo, Bua.
6. Sometime during the COVID lock down period in 2021, the victim cannot recall the exact date and time but it was in the night, the victim was asleep on the mattress in the village hall with her younger sister and on the other mattress her mother was sleeping with her baby brother.
7. On the said night, the victim was asleep when the accused had returned from drinking grog. Whilst sleeping, she felt someone poking her vagina with fingers. When the victim looked up she saw with the help of the torch light that was lit in the hall that it was the accused. The accused was poking her vagina (count 1).
8. Two weeks after the first incident, the victim was in the village hall where the family was staying. The victim's mother had gone to fetch *rourou* leaves. The victim stayed back to cook cassava for their dinner. The accused also stayed back to put the victim's younger siblings to sleep.
9. The victim was still cooking cassava when the accused came to her, carried her and took her to where her siblings were asleep. He placed her on the floor and pulled her underwear down to her knees. The accused was only wearing a sulu which fell to the floor exposing his penis.
10. The accused spread the victim's legs apart and whilst rubbing his penis on her vagina, he tried to penetrate her vagina with his penis (count 2).

11. On the third occasion, the victim does not recall the exact date but says it was on another date, sometime in 2021. The victim's mother had gone to wash their clothes at the river. The victim was playing at the neighbour's house and went home to check on her younger sibling who were asleep.
12. Upon arriving at home, the victim discovered that the accused was home too. He asked her to step on his back as it was paining. Whilst she was stepping on his back, he pulled her leg causing her to sit next to the accused.
13. The accused made her lie on the floor and proceeded to pull down her underwear and shorts down to her knees. He then also removed his own shorts down to his knees and was only wearing his underwear. The accused then spread the victim's leg apart and rubbed his genitalia whilst it was covered with his underwear onto the victim's naked vulva (count 4). The accused then went down and licked the victim's vulva with his tongue for about 2 minutes (count 3).
14. On 28 April 2022 at Tavulomo, Bua, the accused had assaulted the victim with a thin, long PVC pipe on her arms. The matter was reported after the victim informed her grandmother of what the accused had subjected her to.
15. The victim was medically examined by two medical officers. The doctors found loss of continuity in hymenal membrane of the victim and abrasions on her right forearm.
16. The accused was arrested and interviewed under caution on 26 May 2022 at Labasa Police Station. In his record of interview, the accused made admission from Questions & Answers 30 to 38 and Questions and Answers 41 to 44.

17. The accused is a first offender.
18. The court finds the accused's guilty pleas are voluntary, informed and competent. He is convicted as charged. I will now explain his sentence.
19. One of the indicators of the seriousness of an offence is the maximum penalty prescribed for it in the legislation.
20. Rape is punishable by life imprisonment. The nature of penetration does not diminish the seriousness of offence. The relevant consideration is the harm that is done to the victim regardless of whether the victim was penetrated with a penis, tongue, finger or an object.
21. Rape of a child attracts a tariff of 11-20 years imprisonment. In worst cases the tariff may be expanded.
22. Attempted rape and sexual assault are punishable by 10 years imprisonment and assault causing actual bodily harm is punishable by 5 years imprisonment.
23. At the time of the offending, the victim was only 12 years. She was extremely vulnerable. Numerous sexual indecencies were committed on her over a period of one year soon after a natural disaster and during the Covid-19 Pandemic. The accused was her stepfather and her guardian. He was an authority figure over her. The child victim did not complain to anyone because she was living in a coercive environment. The accused knew that. That is why he repeated the abuse. He breached the trust of the victim and exposed her to sexual acts at a very tender age. He has caused considerable psychological and physical harm to the victim.
24. The purpose of sentence in this case is to denounce the crime in the strongest terms. Rape is a deplorable crime. It is more deplorable when a child is raped by a family member.

25. The mitigating factors are that the accused pleaded guilty early and saved the court's time and resources. The victim is relieved from the trauma of giving evidence. The accused made full admissions in his caution interview. He expresses remorse for his crime. He is a first time offender.
26. I consider an aggregate sentence is appropriate to reflect the overall criminality involved in this case.
27. I use 14 years imprisonment as a starting point, add 4 years to reflect the aggravating factors and deduct 4 years to reflect the mitigating factors.
28. The accused is sentenced to an aggregate term of 14 years imprisonment. He has already served 1 ½ years in custody on remand. The remaining sentence for him to serve is 12 ½ years' imprisonment with a non-parole period of 10 years.
29. A permanent DVRO with no contact and non-molestation conditions is issued against the accused.



Hon. Mr. Justice Daniel Goundar

Solicitors:

Office of the Director Public Prosecutions for the State

Legal Aid Commission for the Accused