

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 211 of 2023

STATE

vs.

SS

Counsel:	Ms. J. Fatiaki for the State Mr. J. Prasad for Accused
Dates of Hearing:	22 nd and 23 rd January 2024
Date of Closing Submission:	25 th January 2024
Date of Judgment:	23 rd February 2024
Date of Sentence:	01 st March 2024

SENTENCE

1. The names of the two Complainants and the Accused are suppressed.
2. On the 23rd of February 2024, the Court found you guilty and convicted of one count of Rape contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act, which carries a maximum penalty of life imprisonment, one count of Rape, contrary to Section 207 (1) (2) (c) and (3) of the Crimes Act, which carries a maximum penalty of life imprisonment and two counts of Sexual Assault, contrary to Section 210 (1) (2) (a) of the Crimes Act, which carries a maximum penalty of ten years imprisonment.
3. It was established that you had penetrated the anus of the first Complainant with your penis and then penetrated his mouth with your penis. The first Complainant was nine years old

when these crimes occurred. You then indecently and unlawfully touched the penis and the backside of the second Complainant. The second Complainant was eight years old.

4. Rape is one of the most humiliating and distressing crimes. It becomes more serious when it is involved with a child victim. Hence, I find that Rape of this nature is a very serious crime.
5. The Fiji Court of Appeal in **Subramani v State [2018] FJCA 82; AAU0112.2014 (the 1st of June 2018)** has discussed the appropriate objective of the sentencing of offenders who have committed offences of gross sexual exploitation of young children, where the Fiji Court of Appeal held that:

“The offence of rape of young person related to the appellant is a serious offence. In this case the complainant was 11 years old and the appellant was her grand uncle (her grandfather’s brother). The authorities indicate that whilst rehabilitation is a factor to be considered when fixing a non-parole period, so also are deterrence, denunciation, condign punishment and community protection and expectations. The appropriate person to balance these objectives in each case is the sentencing judge. In the present case, given the age of the appellant, re-habilitation is not a particularly relevant matter whereas the expectations of the community and the protection of young girls should be reflected in both the head sentence and the non-parole term so as to send a strong signal that the courts will impose appropriate sentences in such cases.”

6. The Supreme Court of Fiji in **Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018)** held that the increasing prevalence of the crimes of this nature demands the courts to consider widening the tariff for the rape against children. The Supreme Court of Fiji held that:

“The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.”

7. In view of the serious nature and the prevalence of 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 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 society denounces such crimes without any reservation.
8. Gates CJ in Aitcheson v State (supra) held that the tariff for Rape of a child is between 11 -20 years imprisonment period. It was held in State v Epeli Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (the 14th of November 2012) that the tariff for the offence of Sexual Assault is between 2 years to 8 years imprisonment.
9. These four offences are founded on the same series of offences. Therefore, the Court finds it appropriate to impose an aggregate sentence according to Section 17 of the Sentencing and Penalties Act.
10. The first Complainant was nine years old, and the second Complainant was eight years old when this incident occurred. The Victim Impact Reports detail the emotional and psychological effect that these offences have caused on the two young Complainants. It has adversely changed the two Complainants from fun-loving, active, happy young boys to withdrawn, scared, paranoid children. In view of these facts, the level of harm in these offences is significantly high.

11. You lured the first Complainant to your house by showing him chocolate when he was at the guava tree near your home. You then sexually assaulted the second Complainant, who came to your place looking for the first Complainant. By doing this crime, you exposed these two young boys to sexual activities, thus preventing them from having a natural growth of maturity in their respective lives. The age difference between you and the two young Complainants is significant.
12. In the mitigation submissions, the learned Counsel for the Defence submitted your personal and family background, which I do not find any mitigatory value.
13. You are a first offender. There is no evidence or information before this Court to consider your general reputation in society and also no information about any significant contribution that you have made to the community. Considering these reasons, you are only entitled to a meagre discount for your previous character.
14. Having taken into consideration the seriousness of the crime, the purpose of the sentence, the level of harm, the aggravating factors and the mitigating factors, I sentence you to sixteen (16) years of imprisonment as an aggregate sentence for these four offences.
15. Considering the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find fourteen (14) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for fourteen (14) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

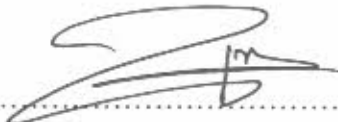
Head Sentence

16. Accordingly, I sentence you to a period of **sixteen (16) years** imprisonment for the two counts of Rape and two counts of Sexual Assault as charged in the Information. Moreover, you are not entitled to parole for fourteen (**14) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

17. You have been in custody for this case for nearly eighty-two (82) days, as the Court did not grant you bail. Under Section 24 of the Sentencing and Penalties Act, I consider three (03) months to be a period of imprisonment you have already served.
18. Accordingly, the actual sentencing period is **fifteen (15) years and nine (09) months** imprisonment with a non-parole period of **thirteen (13) years and nine (09) months**.
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

01st March 2024

Solicitors

Office of the Director of Public Prosecutions for the State.

John Prasad Law for the Accused.