

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 093 OF 2023**

**STATE**

**v**

**AKUILA VOSATAKI KACANAVESIKULA**

Counsel: Mr J. Nas for State  
Ms L. Volau with Ms S. Nand for Defence

Date of Judgment: 24 February 2025

Date of Sentence Hearing: 27 February 2025

Date of Sentence: 28 February 2025

**SENTENCE**

1. Mr Akuila Vosataki Kacanavesikula, you were convicted after trial of one representative count of Rape. The alleged rapes occurred in 2002 when the Penal Code, (Cap 17) was in force. Therefore, you were charged under Sections 149 and 150 of the Penal Code. The information filed by the Director of Public Prosecutions was as follows:

Statement of Offence

RAPE: Contrary to Sections 149 and 150 of the Penal Code, Cap 17

Particulars of Offence

AKUILA VOSATAKI KACANAVESIKULA between the 1<sup>st</sup> day of January 2002 and 31<sup>st</sup> December 2002, at Nadi in the Western Division, had carnal knowledge of EMELE TAIVEI KACANAVESIKULA, without her consent.

2. You are the victim's biological father and the father of seven children, with the victim being the fourth youngest. You committed the offence in 2002 when the victim was only 12 years old; she is now 34. At the time of the offence, the victim and her younger siblings were living under your care and custody after you won custody of all the children.
3. On the day of the 1<sup>st</sup> incident in 2002, the victim returned home after an inter-house athletics meet and slept in her room upstairs. You went to her room and woke her up. You told her to come to your room pretending to show the lamp you had just bought. You told her to sit on your bed and started taking off her pants. Being astonished, she kept asking, 'Why?' You removed her pants and underwear, saying, 'It's okay'. Then you covered her mouth while she was resisting and inserted your penis into her vagina without her consent. When you had stopped, she pulled up her pants and ran to the porch. You followed her to the porch and threatened her. When she told you that she would complain to her mother, you warned her not to tell anybody; if she did, she would be in trouble. You further told her that if something happened to you, no one was there to look after her younger siblings; it would embarrass her family, and nobody would want to marry her. She was terrified and did not tell anybody about the rape.
4. Being assured that the victim would not tell anybody about your immoral behaviour, you carved out an opening on the wooden floor to access her room upstairs, and you continued to have sexual intercourse with her on several occasions. You used her dependency on money for her basic needs for sexual gratification.
5. Thinking about the family's reputation and her younger siblings, the victim kept the matter a secret for many years and refrained from reporting to the police. She could not bear the

pain any longer when her ex-husband, to whom she had revealed about the rape, used to bring out her past to swear at her. The re-traumatisation continued when her siblings, during arguments with you, brought up her bitter past from time to time to silence you. The affairs were so painful for her that she almost took her own life twice. When the news about you raping the victim infiltrated the community outside the family, it tarnished her reputation and that of her family, which she had been trying to protect. She eventually decided to report the matter to the police to put this ordeal to an end.

6. The evidence led at the trial and the Victim Impact Statement filed by the State show how the victim has been emotionally and psychologically traumatised by your actions. The impact of your actions on the victim continued for a long period after the incident.
7. In selecting the sentence best suited to you, I must regard the proportionality principle enshrined in the Constitution and the Sentencing and the Penalties Act 2009 (SPA). I would also regard Section 4 of the SPA, the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Having had due regard to the seriousness of the offence and harm caused to the victim, I would select the starting point. The final sentence will be determined after making just adjustments for the aggravating and mitigating factors.
8. The courts in the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is the most serious form of sexual violence. The United Nations Convention on the Rights of the Child, to which Fiji is a party, and our own Constitution require the courts to protect the children who are vulnerable members of our society. Our society and the children expect elders and relatives in a domestic setting to care for and protect them. The children are entitled to live their lives free from any form of physical or emotional abuse.
9. Sexual offences involving children are on the rise in Fiji. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. This Court must see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive harsher punishment to

mark society's outrage and denunciation against sexual abuse of children. The main purpose of your punishment is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and others with similar impulses that if anyone yields to this crime will meet with severe punishments.

10. The maximum punishment for Rape in terms of Section 150 of the Penal Code is life imprisonment.
11. A sentencing tariff set by the superior courts reflects the current sentencing practice that should be followed by the Courts below irrespective of the date of offence<sup>1</sup>. The Supreme Court in *Aitcheson v State*<sup>2</sup> has outlined the current sentencing tariff for child rape. Accordingly, the child rapists should be sentenced to an imprisonment term within the range between 11 years and 20 years.
12. You committed the offence in 2002 when the Penal Code was in force. The legal proceedings against you started approximately two decades after the offence. The delay is due to the victim's late reporting.
13. The courts in Fiji has seen considerable changes to the sentencing tariff for child rape since the date of the offence (2002) while the statutory maximum punishment (life imprisonment) has remained the same. Hamza J in *State v Oionimua*<sup>3</sup> took the view that it would be unjust to apply the tariff laid down by the Supreme Court in *Aitcheson* to punish an offender who had committed a child rape contrary to sections 149 and 150 of the Penal Code 25 years ago. His Lordship thought it more appropriate to use the tariff endorsed by the Supreme Court in *Anand Abhay Raj v The State*<sup>4</sup> because it involved a case where the accused had been convicted of child rape contrary to the Penal Code. In *Raj*, the Supreme Court endorsed a sentencing tariff between 10- and 16-years' imprisonment in child rape cases.

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<sup>1</sup> Section 4(2)(b) of the SPA

<sup>2</sup> [2018] FJSC 29; CAV0012 of 2018 (2 November 2018)

<sup>3</sup> [2021] FJHC 147 (8 March 2021)

<sup>4</sup> [2014] FJSC 12; CAV 0003 of 2014 (20 August 2014)

14. *Qionimua* is currently in appeal and the single judge of the Court of Appeal found the Hamza J's reasoning not sound or logical<sup>5</sup> given the tariff in *Raj* too was introduced in 2014 and could not have been applied for the same reason of the offending having taken place 25 years ago. Now the issue is before the full court of the Court of Appeal.
15. While the debate on whether a guideline judgment applies retrospectively continued unresolved at the Supreme Court level<sup>6</sup>, the Court of Appeal authoritatively held that presumption against retrospective application of penal provisions would not apply to sentencing tariff set by court<sup>7</sup>. Having considered the New Zealand guideline Judgment in *Zhang v R*<sup>8</sup>, the Court of Appeal in *State v Chand*<sup>9</sup> recently held that '*A guideline judgment applies to all sentencing that takes place after the date of its delivery regardless of when the offending took place.*'
16. Therefore, I would adopt the sentencing tariff of 11 to 20 years imprisonment set by the Supreme Court in *Aitcheson* in determining your sentence. Taking into consideration the objective seriousness of the offence and the harm caused to the victim, I commence your sentence at 11 years imprisonment from the bottom end of the tariff.
17. I identify the following aggravating factors:
  - i. After committing the first rape in 2002, you subjected the victim to a series of rapes.
  - ii. You have breached all social norms and the trust expected of you as a father.
  - iii. There was a large disparity in age between you and the victim. She was 12 years old whereas you would have been in your forties at the time of offending. There was an age gap of approximately 30 years.

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<sup>5</sup> Paragraph [8] *The State v Qionimau* AAU 040 of 2021 (11 December 2023)

<sup>6</sup> *Kumar v State* [2018] FJCA 30; (2 Nov 2018); *State v Tawake* [2022] FJSC 22 (28 April 2022)

<sup>7</sup> *Narayan v State* AAU 107 of 2016 ; *Tagidugu v State* [2022] FJHC 42 (26 March 2022)

<sup>8</sup> [2019] NZCA 507

<sup>9</sup> [2023] FJCA 252 (29 November 2023)

- iv. You took advantage of the victim's vulnerability, helplessness and naivety. You exposed the innocent mind of a child to sexual activity at such a tender age and thereby robbed the complainant of her innocence.
  - v. The offence is premeditated. You planned subsequent rapes by creating an opening to access the victim's room from your room to continue the 'sex game' secretly.
  - vi. You prevented the victim from seeking help and complaining to anybody.
  - vii. The impact of the crime on the complainant was extremely traumatic and long-lasting. The victim was emotionally and psychologically traumatized by your actions.
18. With the help of the submissions filed by your Counsel, I would identify the following mitigating factors:
- I. You are now 67 years of age. You are divorced and a father of seven children. However, these personal circumstances cannot be considered as of substantial mitigating effect.
  - II. You are a first offender. You have no previous convictions recorded against you. You were a person of previous good character until you committed this offence.
19. Considering the aforementioned aggravating factors, I increase your sentence by 6 years to arrive at an interim sentence of 17 years imprisonment. I grant you a discount of 1 ½ years for mitigating circumstances to arrive at a sentence of 15 ½ years' imprisonment.

20. You had been in remand custody for approximately 6 months. The period you were in remand shall be regarded as a period of imprisonment already served by you<sup>10</sup>. Accordingly, 6 months is deducted to arrive at a final sentence of 15 years' imprisonment.
21. In determining the non-parole period, I have given due consideration to your rehabilitation potential and the risk in terms of community protection in the event of you being released early. Pursuant to Section 18 of the Sentencing and Penalties Act, I fix a non-parole period of 12 years. You are eligible for parole after serving 12 years in the corrections facility.

Summary

22. Mr Akuila Vosataki Kacanavesikula, you are sentenced to 15 years' imprisonment with a non-parole period of 12 years.
23. You have 30 days to appeal to the Court of Appeal if you so wish.



Aruna Aluthge  
Judge

28 February 2025

At Lautoka

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence

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<sup>10</sup> Section 24 of the Sentencing and Penalties Act