

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 126 OF 2013S

STATE

VS

PAULIASI MATAUNITOGA

Counsels : **Mr. Y. Prasad and Ms. V. Prasad for State**
Mr. R. Vananalagi for Accused

Hearings : **5th and 11th November, 2013**

Sentence : **25th November, 2013**

SENTENCE

1. On 5th November, 2013, in the presence of your counsel, you pleaded guilty to the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

PAULIASI MATAUNITOGA from the 4th day of August 2008 to the 17th day of January 2010, at Vatukalo Village, Levuka, in the Eastern Division, had carnal knowledge of **S. B.** without her consent.

SECOND COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to section 154 (1) of the Penal Code, Cap. 17

Particulars of Offence

PAULIASI MATAUNITOGA from the 3rd day of August 2008 to the 26th day of December 2009, at Vatukalo Village, Levuka, in the Eastern Division, unlawfully and indecently assaulted **S. B.**

2. On 11th November, 2013, the prosecution read the following summary of facts. You were 46 years old and reside in a village in Levuka, Ovalau. The complainant was your daughter aged 19 years old in 2008. According to the prosecution, on 3rd August 2008, the complainant was lying on a bed in the family house. You came in, removed your clothes and exposed your penis to her. You then forced her to masturbate you until you ejaculated. The next day, the 4th August 2008, you took the complainant to the family farm. At the farm, you forced her to take off her clothes. You took off your clothes, fondled her vagina, then forcefully inserted your penis into her vagina, without her consent. On 22nd September 2008, while the complainant was sleeping in her room, you came and woke her up. Then you forced her to masturbate you until you ejaculated.
3. On 29th October 2008, the complainant was cleaning the family house. You came in and threatened her with a cane knife. Then you forced her to take off her clothes. You then had forceful sexual intercourse with her, without her consent. On 26th November 2008, you repeated the above to her. She was in the family house. You came in, forcefully removed her clothes,

sucked her breast and kissed her lips, then forcefully had sexual intercourse with her, without her consent. In the month of December 2008, on 30th January 2009, 28th March 2009 and 16th June 2009, you repeatedly forced the complainant to masturbate you until you ejaculated.

4. On 26th December 2009 and 17th January 2010, you repeatedly raped the complainant in the family home, by having sexual intercourse with her without her consent. On all the above occasions, you knew the complainant was not consenting to have sex with you, at the time. You repeatedly told her not to raise the alarm, or you will kill her. On 18th January 2010, the matter was reported to police. An investigation was carried out. You were caution interviewed by police on the same day, and you admitted the offences. You were then charged for rape and indecent assault.
5. The court checked with your counsel to see that you've admitted the element of the offences in count no. 1 and 2. Through your counsel, you admitted that, at the relevant times mentioned in the prosecution summary of facts, you had unlawful sexual intercourse with the complainant when you penetrated her vagina with your penis, without her consent, and you knew she was not consenting, at the time. You also admitted that, at the relevant times, mentioned in the prosecution's summary of facts, you indecently assaulted the complainant. Because of your above admissions, I find you guilty as charged on count nos. 1 and 2, and I convict you accordingly.
6. In **State v Luke Maya**, HAC 338 of 2011S, High Court, Suva, I said the following on rape, “...**As a criminal offence, rape is always treated as a serious offence. Consequently, it carries the maximum sentence of life imprisonment. For adults, the tariff is a sentence between 7 to 15 years imprisonment: see Mohammed Kasim v The State, Criminal Appeal No. 21 of 1993, Fiji Court of Appeal; Bera Yalimawai v The State, Criminal Appeal No. AAU 0033 of 2003, Fiji Court of Appeal; Navuniani Koroi v The State, Criminal Appeal No. AAU 0037 of 2002, Fiji Court of Appeal and Viliame Tamani v The State, Criminal Appeal No. AAU 0025 of 2003, Fiji Court of Appeal...**”

7. On “indecent assaults”, I said the following in **State v KNP**, HAC 079 of 2012S, High Court, Suva, **“...Indecent assault” carries a maximum sentence of 5 years imprisonment. The tariff for “indecent assault” is a sentence between 1 to 4 years imprisonment. The more serious the indecent assault is, the higher the sentence will be: see Ratu Penioni Rakota v The State, Criminal Appeal No. HAA 0068 of 2002S, High Court, Suva; Sikeli Nayate v The State, Criminal Appeal No. HAA 46 of 2008, High Court, Suva...**”
8. In this case, the aggravating factors, were as follows:
- (i) Breach of Parental Trust. The complainant was your daughter. At the time, she was 19 years old. You were 46 years old. As a father, you are supposed to look after and care for your daughter. Instead, you grossly abused the trust she had in you. This type of offence is becoming prevalent in our community, and it’s about time, severe sentences are given out, as a warning to would be offenders;
 - (ii) Threats to the complainant. On the facts, you always threatened to kill the complainant, if she raised the alarm. This is certainly parental abuse in its extreme. Your behaviour towards the complainant showed you as a typical coward, threatening those who could not defend themselves. You must not complain when a long prison sentence is given to you, to protect those who cannot protect themselves;
 - (iii) Through your offending, you have not only ruined the complainant’s life, you have also ruined your family’s life. Your family doesn’t deserve the treatment you have metered out to them.
9. The mitigation factors were as follows:
- (i) At the age of 50 years, this is your first offence;
 - (ii) You have raised your family well, until you committed these offences;
 - (iii) You have been remanded in custody since 15th March 2012, that is, 1 year 8 months 9 days ago.
10. On the rape charge, I start with 15 years imprisonment. I add 4 years for the aggravating factors, making a total of 19 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 16 years imprisonment.

11. On the “indecent assault” charge, I start with 3 years imprisonment. I add 2 years for the aggravating factors. I deduct 1 year for the mitigating factors. Balance is 4 years imprisonment.
12. In summary, your sentences are as follows:
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|------|-------------|---|----------------------|---|-----------------------|
| (i) | Count No. 1 | : | Rape | : | 16 years imprisonment |
| (ii) | Count No. 2 | : | Indecent:
Assault | : | 4 years imprisonment |
13. Because of the principle of totality of sentencing, I direct that the above sentence be concurrent to each other, that is, a total sentence of 16 years imprisonment.
14. For sexually abusing the complainant, I sentence you, Pauliasi Mataunitoga, to 16 years imprisonment, with a non-parole period of 15 years imprisonment, effective forthwith.
15. The name of the complainant is permanently suppressed, to protect her privacy.

Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecutions, Suva.**
Solicitor for Accused : **Legal Aid Commission, Suva.**