

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 252 OF 2012S

STATE

VS

SAVENACA TURAGAKECE

Counsels : **Mr. S. Nath and Ms. W. Elo for the State**
Mr. M. Fesaitu for Accused

Hearings : **2, 3 and 4 June, 2014**

Summing Up : **5 June, 2014**

Judgment : **5 June, 2014**

Sentence : **9 June, 2014**

SENTENCE

1. On 2 June 2014, before the trial proper started, you pleaded guilty to count no. 1 and 6, of the following information, and was convicted as charged, on 3 June 2014. On count no. 4, you were acquitted on that count on 4 June 2014. In a judgment delivered on 5 June 2014, you were found guilty of, and convicted, on the following additional counts no. 2, 3, 5, 7 and 8:

FIRST COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

SAVENACA TURAGAKECE between the 1st day of January 2004 and the 31st day of December 2004 at Vabea Village, Ono, Kadavu in the Central Division, unlawfully and indecently assaulted a girl namely **A. T.**

SECOND COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

SAVENACA TURAGAKECE between the 1st day of January 2005 and the 31st day of December 2005 at Vabea Village, Ono, Kadavu in the Central Division, had unlawful carnal knowledge of a girl namely **A. T.**, without her consent.

THIRD COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

SAVENACA TURAGAKECE between the 29th of January 2006 and the 4th day of May 2006, at Vabea Village, Ono, Kadavu in the Central Division, had unlawful carnal knowledge of a girl namely **A. T.**, without her consent.

FIFTH COUNT

(Representative Count)

Statement of Offence

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

Particulars of Offence

SAVENACA TURAGAKECE between the 1st day of January 2008 and the 31st day of December 2008 at Vabea Village, Ono, Kadavu in the Central Division, had unlawful carnal knowledge of a girl namely **A. T.** without her consent.

SIXTH COUNT
(Representative Count)
Statement of Offence

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

Particulars of Offence

SAVENACA TURAGAKECE between 18th day of May 2009 and the 5th day of September 2009 at Vabea Village, Ono, Kadavu in the Central Division, unlawfully and indecently assaulted a girl namely **A. T.**

SEVENTH COUNT
(Representative Count)
Statement of Offence

RAPE: Contrary to section 207(1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SAVENACA TURAGAKECE between the 4th day of September 2010 and the 25th day of January 2011 at Vabea Village, Ono, Kadavu in the Central Division, had carnal knowledge of a girl namely **A. T.**, without her consent.

EIGHTH COUNT
(Representative Count)
Statement of Offence

RAPE: Contrary to section 207(1) and (2)(a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

SAVENACA TURAGAKECE between 17th day of August 2011 and the 4th day of September 2011 at Urban Nest Motel, Suva in the Central Division, had carnal knowledge of a girl namely **A. T**, without her consent.

2. The brief facts were as follows. Between 2004 and 2011, you were married to the complainant's mother (PW4). PW4 had three daughters from a previous relationship. But during your marriage, you treated PW4's three daughters as your own. You were their stepfather. In 2004, you started to sexually abuse the youngest of the three daughters (PW1) by fondling her breasts and touching her private part. She was aged 11 to 12 years old, at the time (count no. 1).
3. In 2005, your abuse of PW1 turned into rape, that is, you first raped her as a child (count no. 2). In 2006, you continued to sexually abuse her, by raping her again as a child. She was still under 13 years, at the time (count no. 3). Again in 2008, you continued to abuse PW1 by raping her again. She was 15 years old at the time (count no. 5). You inserted your finger into her vagina in 2009 (count no. 6). In 2010, you again raped her. She was 17 years old at the time (Count no. 7). In 2011, you again raped the complainant at "Urban Nest Motel" in Suva (count no. 8).
4. In **State v Poate Rainima**, Criminal Case No. HAC 034 of 2011S, High Court, Suva, I said the following:
 - ...12. *Rape is a serious offence. The maximum sentence is 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.*
 13. *Since the complainant in this case was a child, the tariff for the rape of a child is a sentence between 10 to 15 years: see **Mark Mutch v The State**, Criminal*

Appeal No. AAU 0060 of 1999, Fiji Court of Appeal; **State v Lepani Saitava**, Criminal Case No. HAC 10 of 2007, High Court, Suva; **The State v AC**, Criminal Case No. HAC 192 of 2008, High Court, Suva; **State v VV**, Criminal Case No. HAC 084 of 2009, High Court, Suva and **State v Waqabaca**, Criminal Case No. HAC 139 of 2008; High Court, Suva. The actual sentence will depend on the mitigating and aggravating factors.

14. "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. AAU 0068 of 2002S, High Court, Suva; **Sikeli Nayate v The State**, Criminal Appeal No. HAA 46 of 2008, High Court, Suva..."

5. The mitigating factors, in this case, were as follows:

- (i) At the age of 48 years, this is your first offence;
- (ii) You have been remanded in custody for approximately 1 year 11 months;
- (iii) You were previously the sole bread winner in your family.

6. The aggravating factors were as follows:

- (i) Breach of Parental Trust. You were the complainant's step-father. As such, you were supposed to look after her, mentor her and counseled her to become a confident and progressive member of society. However, you seriously abused your position by sexually molesting her and raped her on numerous occasions, both as a child and young person;
- (ii) Rape of a child. The courts have repeatedly said before that, the rape of a child is a very serious matter, in our society. As the courts have repeatedly said, children are the future of this country, and those who abuse them must expect a severe sentence from the courts, to register society's disapproval and a warning to other would-be offenders;
- (iii) You subjected the complainant to a 7 year ordeal. When she was 11 years old, you indecently assaulted her, as a child. Then you began to rape her on numerous occasions between 2005 and 2011. This was while her mother, your wife, was in the

a result of your offendings, the complainant had been seriously traumatized. I hope she will rise up from the miseries you have caused her, and take her rightful place in society;

(iv) By offending against her, you have showed utter disregard to her right as a human being, and her right to dignity. Because of what you did, you will have to pay with the serious loss of your liberty.

7. I will start with the rape charges first, because they are the most serious, of the offences. On count no. 2, I start with a sentence of 13 years imprisonment. I add 4 years for the aggravating factors, making a total of 17 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 14 years imprisonment.

8. I repeat the above process and sentence for counts no. 3, 5, 7 and 8.

9. On count no. 1, I start with 2 years imprisonment. I add 2 years for the aggravating factors, making a total of 4 years imprisonment. I deduct 2 years for the mitigating factors, leaving a balance of 2 years imprisonment.

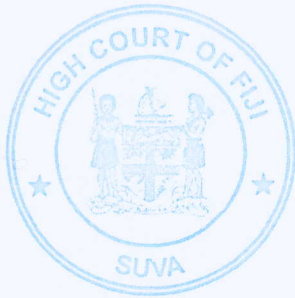
10. I repeat the above process and sentence for count no. 6.

11. In summary, your sentences are as follows:

(i)	Count No. 1	:	Indecent Assault	:	2 years imprisonment
(ii)	Count No. 2	:	Rape	:	14 years imprisonment
(iii)	Count No. 3	:	Rape	:	14 years imprisonment
(iv)	Count No. 5	:	Rape	:	14 years imprisonment
(v)	Count No. 6	:	Indecent Assault	:	2 years imprisonment
(vi)	Count No. 7	:	Rape	:	14 years imprisonment
(vii)	Count No. 8	:	Rape	:	14 years imprisonment

12. Because of the totality principle of sentencing, I direct that the above sentences are made concurrent to each other, that is, a final total sentence of 14 years imprisonment.

13. Savenaca Turagakece, because of the serious sexual offences that you have committed against the complainant, I sentence you to 14 years imprisonment, with a non-parole period of 13 years imprisonment, effective forthwith.
14. The name of the complainant is permanently suppressed, to protect her privacy.



Salesi Temo
JUDGE

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