

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 050 OF 2015 LAB

STATE

V

ILAI NAVUKI

Counsels : Ms. W. Elo for State
Mr. M. Fesaitu for Accused

Hearing : 26 January, 2016

Sentence : 27 January, 2016

SENTENCE

1. On 26 January 2016, in the presence of your counsel, you pleaded guilty to the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

ILAI NAVUKI on the 10th day of October 2015, in Savusavu, in the Northern Division, had carnal knowledge of **P.N.**, without his consent.

SECOND COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ILAI NAVUKI on the 10th day of October 2015, in Savusavu, in the Northern Division, assaulted **P.N.**, causing **P.N.**, actual bodily harm

2. The prosecution then read her summary of facts in court. They were as follows. On 10 October 2015, the accused was married with six children – three sons and three daughters. They were aged between 18 years and 8 months old. The accused and his wife had been married for 18 years. The family lived in a village in Cakaudrove. At the time, the accused's wife had been in Nadi for about a month.
3. The complainant in this case was the accused's son. He was 16 years at the time. On 10 October 2015, between 8 to 11pm, the accused was at home with his son and two daughters. The daughters were asleep. The accused called the complainant to his room to massage him, using coconut oil. Later, he asked his son for anal intercourse. The son refused. The accused then punched him on the jaw. He later forced himself on his son by penetrating his anus with his penis, without his consent, and he well knew he was not consenting to the above, at the time. The matter

was reported to police. The accused was interviewed by police and he admitted the offence. He was later charged with rape and assault.

4. Through his counsel, the accused admitted the above facts. He admitted, he penetrated his son's anus with his penis, without his consent and he well knew at the time that he was not consenting to the above. He also admitted he punched his son in the jaw when he refused to have sex with him. As a result of the above admissions, the court found the accused guilty as charged on both counts and convicted him accordingly on both counts.
5. Rape is a serious sexual offence and carries a maximum sentence of life imprisonment. For the rape of a juvenile, the tariff is a sentence between 10 to 16 years imprisonment: Anand Abay Raj v The State, Criminal Appeal Case No. CAV 0003 of 2014, Supreme Court of Fiji. The actual sentence will depend on the mitigating and aggravating factors.
6. In this case, the aggravating factors, were as follows:
 - (i) Serious Breach of Trust. The complainant was your juvenile son. As his father, you are suppose to look after him and mentor him to become a good citizen. If he was facing life's troubles, you are suppose to counsel him and assist him resolve life's problems. You are suppose to be a good role model for your son. You are suppose to be his pillar of support in life. Instead, you did the unthinkable. You raped him and abused the trust he had in you. You turned his world into a living hell. You will have to be punished as a deterrence to others, and you should not complain when sentenced;
 - (ii) Rape of a Young Person. Sexual attacks on young persons are becoming prevalent in our community. They need to be protected. It is the function of the court to protect the vulnerable in our society by passing appropriate custodial sentences;
 - (iii) Morale decline in our community. The family is the basic social unit in our society. It is the expectation of society that the parents will look after and care for their children to become good citizens in future. A strong family leads to a strong nation. The parents are suppose to instill good morals in their children for them to uphold good morals for the nation in

future. Your offending against your son showed the decline in morals in our society. You must be punished as a warning to others.

7. The mitigating factors were as follows:

- (i) At the age of 42 years old, this is your first offending;
- (ii) Although you pleaded guilty to the offence three months after the first call in the High Court, you nevertheless saved the court's time and the need for the complainant to relive the ordeal in the courtroom by giving evidence;
- (iii) You have been remanded in custody for approximately 4 months;
- (iv) You co-operated with police during the investigation.

8. I will start with the rape charge first, as it was the most serious charge in this case. I start with a sentence of 15 years imprisonment. For being a first offender, I deduct 1 year, leaving a balance of 14 years imprisonment. For pleading guilty, I deducted 2 years leaving a balance of 12 years imprisonment. For being remanded in custody for 4 months and co-operating with police during the investigation, I deduct a total of 1 year, leaving a balance of 11 years imprisonment. For the aggravating factors, I add a total of 5 years imprisonment, making a total sentence of 16 years imprisonment. On count no. 1 (rape), I sentence you to 16 years imprisonment.

9. For Count no. 2 (assault), I sentence you to 12 months imprisonment.

10. The summary of your sentences are as follows:

- | | | | | | |
|------|-------------|---|---------|---|------------------------|
| (i) | Count No. 1 | - | Rape | : | 16 years imprisonment |
| (ii) | Count No. 2 | - | Assault | : | 12 months imprisonment |

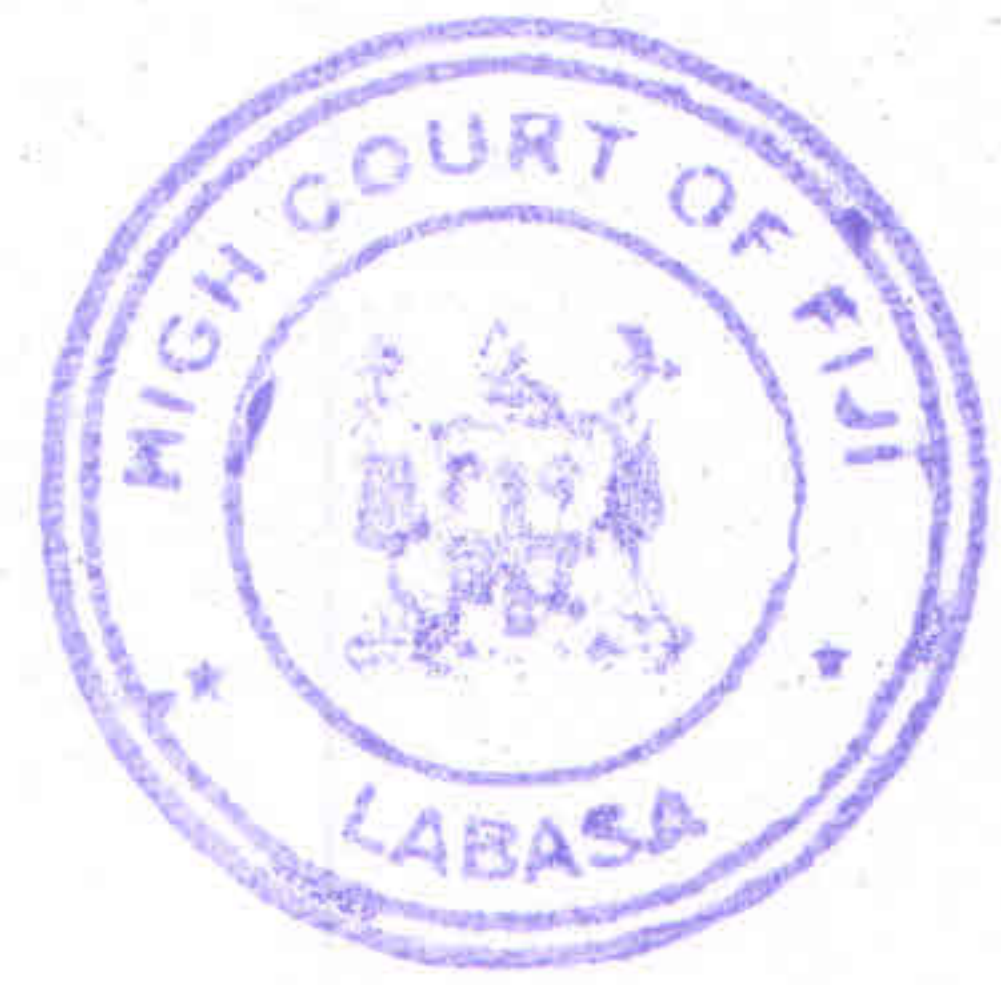
11. Because of the totality principle of sentencing, I direct that the above sentences be made concurrent to each other, that is, a total sentence of 16 years imprisonment.

12. Mr. Ilai Navuki, for offending against your son on 10 October 2015 at Savusavu in the Northern Division, I sentence you to 16 years imprisonment, with a non-parole period of 15 years imprisonment, effective forthwith.
13. The complainant's name is permanently suppressed to protect his privacy.



Salesi Temo

JUDGE



Solicitor for the State : Office of the Director of Public Prosecution, Labasa
Solicitor for the Accused : Legal Aid Commission, Labasa