

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 119 OF 2009S

STATE

vs

RUSIATE VULAONO

Counsels	:	Ms. M. Khan and Ms. M. Konarote for State Mr. A. Naco for Accused
Hearings	:	6, 7 and 8 June, 2016
Summing Up	:	10 June, 2016
Judgment	:	10 June, 2016
Sentence	:	17 June, 2016

SENTENCE

1. In a judgment delivered on 10 June 2016, the court found you guilty and convicted you on the following counts in the following information:

COUNT 1

Statement of Offence

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

Particulars of Offence

RUSIATE VULAONO between 3rd July 2006 to 30th November 2006, at Suva in the Central Division had unlawful carnal knowledge of **S. T** without her consent.

COUNT 2

Statement of Offence

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

Particulars of Offence

RUSIATE VULAONO on the 22nd day of March 2007, at Suva in the Central Division had unlawful carnal knowledge of **S. T** without her consent.

COUNT 3

Statement of Offence

UNNATURAL OFFENCE: Contrary to Section 175 (a) of the Penal Code Cap. 17.

Particulars of Offence

RUSIATE VULAONO at an unknown date in the year 2008, at Suva in the Central Division had carnal knowledge of **S. T** against the order of nature.

COUNT 4

Statement of Offence

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

Particulars of Offence

RUSIATE VULAONO at an unknown date in September 2009, at Suva in the Central Division had unlawful carnal knowledge of **S. T** without her consent.

COUNT 5

Statement of Offence

COMMON ASSAULT: Contrary to Section 244 of the Penal Code Cap. 17.

Particulars of Offence

RUSIATE VULAONO on 17th day of September 2009, at Suva in the Central Division unlawfully assaulted **S. T** by punching her once.

2. The brief facts were as follows. You were 67 years old in 2006. The complainant was 10 years old, going on to 11 years old in November 2006. She was your grand-daughter. On the dates mentioned in Counts No. 1, 2, 3, 4 and 5, you offended against her. First of all, in Count No. 1, when she was 10 to 11 years old, you repeatedly raped her in your bedroom. On 22 March 2007, you again raped her in your bedroom. She was 11 years old at the time (Count No. 2). In 2008, you sodomized her (Count No. 3). She was 12 years old at the time. In September 2009, you again raped her (Count No. 4). She was 13 years old at the time. Finally, you assaulted her on 17 September 2009 (Count No. 5).
3. The most serious of the offences was "rape". I will therefore begin with this offence. It carries a maximum sentence of life imprisonment (Section 150 of the Penal Code, Chapter 17). Recently in the Supreme Court of the Republic of Fiji, the tariff for the rape of juveniles had been set between 10 to 16 years imprisonment: **Anand Abhay Raj v The State**, Criminal Appeal CAV 0003 of 2014. The actual sentence will depend on the mitigating and aggravating factors.
4. The offence of "Unnatural Offence" carried a maximum sentence of 14 years imprisonment (section 175 (a) of the Penal Code, Chapter 17). In **Samisoni Tawake v The State**, Criminal Appeal No. HAA 082 of 2007, High Court, Suva, His Lordship Mr. Justice Isikeli Mataitoga set 4 to 6 years imprisonment, as the tariff for the offence, after reviewing local and overseas authorities. I will accept the above authority. However, the final sentence will depend on the mitigating and aggravating factors.
5. "Common Assault" carried a maximum sentence of 1 years imprisonment (section 244 of Penal Code, Chapter 17).
6. The aggravating factors in this case were as follows:

- (i) *Serious Breach of Trust:* The complainant was your eldest son's daughter. Your son committed suicide in 2002 because of marital difficulties. As her grandfather, you took on the responsibility of looking after your granddaughter from 2006 to 2009. This was noble of you. You became her "father, mother and grandfather". You looked after her schooling and her life. However, you suddenly changed in 2006. Instead of being loving to your grand-daughter, you began to secretly abuse her. First you repeatedly raped her in your bedroom, when everyone was away, in 2006. She was still 10 to 11 years old at the time. Your abuse continued in 2007. Then you sodomised her in 2008, when she was 13 years old. You raped her again in 2009, and you assaulted her on 17 September 2009, when she told her grandmother of your continued abuse of her. You have did the unthinkable. No right-thinking grandfather would dare do what you did. You have to accept that you will get a custodial sentence as a warning to others and to atone for your misdeeds.
- (ii) *Rape of Children:* This problem is becoming prevalent in our society. Despite our churches and holy houses filling up with people on Sundays and other holy days to receive positive messages from the Almighty, our Courthouses are also filling up with alleged child abusers. The Courts had repeatedly said in the past, and will say again, that we will not stand idly by, and watch the children of this Country be abused every day. We will keep on passing deterrent sentences to protect the children of this country.
- (iii) Despite you having your right to defend yourself in Court against the charges against you, you showed no remorse whatsoever throughout the proceeding in this case.

7. The mitigating factors were as follows:

- (i) At the age of 77 years, this is your first sexual offence;
- (ii) You had been remanded in custody for a total of 26 days;
- (iii) This case had been hanging over your head for the previous 6 ½ years, and that in itself, was a punishment itself;
- (iv) You co-operated with police during the investigation.

8. I start with Count No. 1, that is, rape. I start with a sentence of 14 years imprisonment. I add 3 years for the aggravating factors making a total of 17 years imprisonment. I deduct 2 years for mitigating factors No. 1, leaving a balance of 15 years. I deduct 1 month for mitigating factor No. 2, leaving a balance of 14 years 11 months. For mitigating factors No. 3, I deduct 11 months, leaving a balance of 14 years. For mitigating factor No. 4, I deduct 1 year, leaving a balance of 13 years imprisonment. On Count No. 1, I sentence you to 13 years imprisonment.

9. I repeat the above process and sentence for Count No. 2 and 4, both rape charges.
10. For the "Unnatural Offence" (Count No. 3), I sentence you to 8 years imprisonment.
11. For "Common Assault" (Count No. 5), I sentence you to 6 months imprisonment.
12. The Summary of your sentences are as follows:
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|-------|-------------|---|-----------------------|---|-----------------------|
| (i) | Count No. 1 | : | Rape | : | 13 years imprisonment |
| (ii) | Count No. 2 | : | Rape | : | 13 years imprisonment |
| (iii) | Count No. 3 | : | Unnatural:
Offence | : | 8 years imprisonment |
| (iv) | Count No. 4 | : | Rape | : | 13 years imprisonment |
| (v) | Count No. 5 | : | Assault | : | 6 months imprisonment |
13. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, making a total final sentence of 13 years imprisonment.
14. Mr. Rusiate Vulaono, for sexually abusing your grand-daughter between 2006 and 2009, I sentence you to 13 years imprisonment, with a non-parole period of 12 years imprisonment, effective forthwith.
15. The name of the female complainant is permanently suppressed to protect her privacy.
16. You have 30 days to appeal to the Court of Appeal.



Salesi Temo
JUDGE

Solicitor of the State : Office of the Director of Public Prosecution, Suva.
Solicitor for Accused : Mr. A. Naco, Barrister and Solicitor, Suva.