

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL NO. HAC 132 of 2015**

**STATE**

**V**

**SULIASI NASARA**

**Counsel** : Ms. R. Uce for the State.  
: Ms. K. Vulimainadave for the Accused.

**Date of Hearing** : 08 October, 2018  
**Date of Sentence** : 12 October, 2018

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**SENTENCE**

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*(The name of the victim is suppressed she will be referred to as "VS")*

1. The accused is charged with the following offences filed by the Director of Public Prosecutions:

**FIRST COUNT**

**Statement of Offence**

**RAPE:** Contrary to Section 207(1) & (2) (a) (3) of the Crimes Act 2009.

**Particulars of Offence**

**SULIASI NASARA**, between the 1<sup>st</sup> day of December, 2013 and the 1<sup>st</sup> day of January, 2014, at Lautoka in the Western Division, inserted his penis into the vagina of "**VS**", a 12 year old.

## **SECOND COUNT**

### **Statement of Offence**

**RAPE:** Contrary to Section 207(1) & (2) (b) (3) of the Crimes Act 2009.

### **Particulars of Offence**

**SULIASI NASARA**, between the 1<sup>st</sup> day of December, 2013 and the 1<sup>st</sup> day of January, 2014, at Lautoka in the Western Division, inserted his tongue into the anus of **“VS”**, a 12 year old.

## **THIRD COUNT**

### **Statement of Offence**

**SEXUAL ASSAULT:** Contrary to Section 210(1) (a) of the Crimes Act 2009.

### **Particulars of Offence**

**SULIASI NASARA**, between the 1<sup>st</sup> day of December, 2013 and the 1<sup>st</sup> day of January, 2014, at Lautoka in the Western Division, unlawfully and indecently assaulted **“VS”**, a 12 year old.

2. On 30<sup>th</sup> September, 2015 the accused had pleaded not guilty to the charges and the matter proceeded for the parties to finalize pretrial issues.
3. On 5<sup>th</sup> April, 2018 the accused through his counsel informed the court of the accused's intention to take a progressive approach. The matter was adjourned to check on the defence position. On 19<sup>th</sup> April, 2018 the accused pleaded guilty to the charges. After six adjournments the accused admitted the summary of facts. On 10 August, 2018 the State Counsel informed the court that prosecution wished to amend the third count by removing the words 'representative count'.
4. On 30<sup>th</sup> September, 2018 the accused after understanding the offences mentioned in the amended information pleaded guilty.

5. The summary of facts admitted by the accused are as follows:

**SUMMARY OF FACTS**

6. The accused – SULIASI NASARA – is 22 years of age of Vakabuli Village. The victim – “VS” – is 12 years of age, of Vakabuli Village. A copy of the victim’s birth certificate is marked as annexure “A”. The victim and the accused are known to each other as they are cousins and they also reside in the same village.

Sometimes in December, 2013, the victim was playing with other children in the village when the accused called her. The accused then took the victim to a vacant house where he took off her pants and licked her vagina and her anus. The victim was scared and the accused told her not to tell anyone of what had happened (**count 2**).

On another occasion in December, 2013 the victim was playing when the accused called her and took her to a nearby creek beside his house. The accused gave \$10.00 to the victim and told her that he was going to do something to her. According to the victim, the accused took off his pants and showed his penis to the victim which had earrings. The accused then took off the victim’s pants and panty and rubbed his penis on her vagina. The accused then wore a condom and rubbed his penis again on the victim’s vagina (**count 3**).

On a third occasion in December, 2013, the victim was playing with other children in the village when the accused called her. The accused showed \$10.00 to the victim and led her to a vacant house. Inside the vacant house, the accused took off his pants and also removed the victim’s panty and skirt and made her lie on the bed. The accused then

laid on top of the victim and inserted his penis into her vagina. According to the victim, she felt pain and screamed but the accused covered her mouth with his hand. The accused inserted his penis in the victim's vagina more than once. The victim saw blood coming out of her vagina and the accused washed it with a bottle of water and wiped it with a cloth. The accused then licked the victim's vagina and anus. The accused then put on a condom and rubbed his penis on the victim's vagina. He kissed the victim on her lips and sucked her neck. The accused then pulled up the victim's t-shirt and sucked both her breast. He then gave the victim \$10.00 and warned her not to tell anyone about the incident (**count1**).

On the 22<sup>nd</sup> of February, 2014 at about 3pm, the victim was on her way home to get some panadol for her aunt when the accused called her from the same vacant house. The victim went to the accused and saw that he was only wearing his underwear and a t-shirt. The accused then told the victim to take off her pants and bend down on the mattress. The victim refused to take off her pants and at the same time, they were interrupted by the victim's mother namely Mere Galo (PW2) who was calling out to her. The victim then went home and relayed everything to PW2. Thereafter the matter was reported to the police and the accused was arrested.

On the 24<sup>th</sup> of February, 2014, the accused was interviewed under caution by WDC 3692 Asenaca at the Lautoka Police Station. The accused was given all his rights and voluntarily admitted that he licked PW1's vagina and her anus (Q/A. 24-26). A copy of the accused record of interview is marked as annexure "B".

7. On the 30<sup>th</sup> of September, 2018 the accused voluntarily pleaded guilty to one count of rape contrary to section 207(1) & (2) (a) & (3), one count of

Rape contrary to Section 207 (1) & (2) (b) & (3) and one count of Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act 2009.

8. After considering the summary of facts read by the state counsel which was admitted by the accused and upon reading the caution interview of the accused this court is satisfied that the accused has entered an unequivocal plea of guilty on his own freewill. This court is also satisfied that the accused has fully understood the nature of the charges and the consequences of pleading guilty. This court finds that the summary of facts admitted by the accused satisfies all the elements of the offences.
9. In view of the above this court finds the accused guilty as charged and he is convicted accordingly.
10. Section 17 of the Sentencing and Penalties Act states:

*“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*

11. I am satisfied that the three offences for which the accused stands convicted are offences of the same or similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the three offences.
12. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under the most serious category of offences. The

Supreme Court of Fiji in *Anand Abhay Raj vs. The State*, CAV 0003 of 2014 has confirmed that the tariff for the rape of a juvenile is now a sentence between 10 years to 16 years imprisonment. Also see *Kasim vs. State*, AAU 0021J.1993 (27/05/1994).

13. Both counsel filed written sentence submission for which this court is grateful.
14. Counsel for the accused presented the following mitigation on behalf of the accused.
  - a) The accused was 22 years of age at the time of the offending;
  - b) He is married but separated;
  - c) He has a 7 year old son;
  - d) Was the sole breadwinner in his family;
  - e) Seeks leniency of the court;
  - f) Did not use any violence to make the victim to submit to his unlawful acts;
  - g) Has cooperated with the police.
15. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj (supra)* that the personal circumstances of an accused person have little mitigatory value in cases of sexual nature.
16. The aggravating features are as follows:
  - a) Breach of Trust  
The victim and the accused are cousins, their mothers are sisters. The accused breached the trust of the victim by doing what he did. The victim was unsuspecting and vulnerable. The accused breached the trust of a helpless child.

b) Age Difference

The victim was 12 years of age at the time of the offending whilst the accused was 22 years of age. The age difference of 10 years is substantial.

c) Planning

The manner in which the accused committed the offences does show a certain degree of planning. The accused had planned how and when he would commit the offences. The accused by his actions showed a complete disregard to the religious, traditional and family rules that forbids sexual abuse of a child.

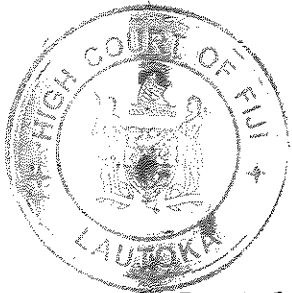
**PREVIOUS CONVICTIONS**

17. The accused has 4 previous convictions from February, 2012 to June, 2017. Furthermore the accused is serving mandatory life imprisonment for the offence of murder with a minimum term of 18 years imprisonment with effect from 13<sup>th</sup> June, 2017.
18. Bearing in mind the objective seriousness of the offences committed I take 12 years imprisonment as the starting point of the sentence. I add 4 years for the aggravating factors bringing the interim total to 16 years imprisonment. Although the personal circumstances and family background of the accused has little mitigatory value, however, I take the accused's guilty plea although not at the first available opportunity as a sign of remorse, saving the court's time, and preventing the victim from reliving her experience in court in reducing the sentence by 1 year. The accused does not receive any reduction for good character due to his previous convictions. The interim aggregate sentence is 15 years imprisonment.

19. I note the accused has been in remand for about 14 days. In exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act I further reduce the sentence by 1 month as a period of imprisonment already served by the accused. The final aggregate sentence for the three offences is 14 years and 11 months imprisonment.
20. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was 12 years of age compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
21. Under section 18 (1) of the Sentencing and Penalties Act, I impose 13 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.
22. Mr. Nasara, you have committed very serious offences upon a victim who trusted you as a cousin brother. You took advantage of the victim by calling her and taking her to a secluded area with you. You have caused pain and suffering to this innocent unsuspecting vulnerable victim due to your lustful desires and have scarred her life forever. As per the victim impact statement the victim is now scared of the opposite sex and she does not trust anyone.
23. This court has an obligation to protect the vulnerable from any form of sexual violations therefore an immediate long term imprisonment is warranted.




24. You were elder of the two by ten years and you ought to have known better and restrained yourself from doing what you did.
25. In summary I pass an aggregate sentence of 14 years and 11 months imprisonment for two counts of rape and one count of sexual assault that the accused has been convicted of with a non-parole period of 13 years to be served before the accused is eligible for parole. It is noted that the accused is serving a mandatory life imprisonment term for murder with a minimum term of 18 years to be served. This sentence will run concurrent to the existing term of imprisonment. This sentence is made concurrent in accordance with the totality principle of sentencing to avoid any crushing effect on the accused.
26. Due to the close family relationship between the victim and the accused a permanent Domestic Violence Restraining Order for non-molestation and non-contact is imposed against the accused to protect the victim.
27. 30 days to appeal to the Court of Appeal.



**At Lautoka**

12 October, 2018



**Sunil Sharma**  
**Judge**

**Solicitors**

**Office of the Director of Public Prosecutions for the State**

**Officer of the Legal Aid Commission for the Accused**