

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 130 OF 2016**

**STATE**

**v**

**SAMUELA TAWANANUMI**

**Counsel : Ms S. Navia / Ms S. Naibe for State  
Ms V. Narara for Accused**

**Date Judgment : 04<sup>th</sup> December, 2018**

**Date of Sentence : 6<sup>th</sup> December, 2018**

(Name of the victim is suppressed. She is referred to as AK)

**SENTENCE**

1. Mr. **SAMUELA TAWANANUMI**, after a full defended trial, you stand convicted of one count of Rape and one count of Sexual Assault. The information on which you were convicted reads as follows:

**First Count**

*Statement of Offence*

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

*Particulars of Offence*

**SAMUELA TAWANANUMI** between the 1<sup>st</sup> of November, 2015 and 30<sup>th</sup> of November, 2015 at Lautoka in the Western Division unlawfully and indecently assaulted AK by touching her vagina.

**Second Count**

*Statement of Offence*

**Rape:** Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act, 2009.

*Particulars of Offence*

**SAMUELA TAWANANUMI** between the 1<sup>st</sup> of November, 2015 and 30<sup>th</sup> of November, 2015 at Lautoka in the Western Division penetrated the vagina of AK with his penis, a child under the age of 13 years.

2. You now come before this Court for sentence.
3. The facts proved at trial in this case are that in November 2015, at one night, the victim was sleeping alone in her bedroom. While she was still sleeping she felt someone taking off her long pants and panty. Then she looked up and saw her father (accused). When she looked up at him he told her to sleep. She closed her eyes. She felt her father touching her vagina. After that he went back to sleep. She was so scared of father. She never told anyone what happened as her father told her not to tell mother what happened, and if she did, he will kill her.
4. The next day at night the victim was sleeping with her cousins in the second bedroom. While she was sleeping, her father came and woke her up and told her to go with him to the sitting room. She then went to the sitting room with father

where no one was sleeping. Then he made her lie down, took off her pants and panty and then he put his penis into her vagina. She felt pain inside her. Then he told her not to tell mother what happened. The next morning when she went to the toilet she then saw blood in her vagina and wiped it with a toilet paper. She never told anyone what happened because she feared.

5. The maximum penalty for Rape is life imprisonment. The maximum sentence for Sexual Assault is 10 years' imprisonment.
  
6. Tariff for juvenile rape is 11-20 years' imprisonment. In Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018) Gates CJ at paragraphs 24 and 25 stated:

*"The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.*

*The tariff previously set in Raj v The State [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms".*

7. The maximum penalty for Sexual Assault is 10 years' imprisonment. In State v Epeli Ratabacaca Laca, HAC 252 of 2011, Madigan J set out the tariff for the offence between 2 and 8 years imprisonment, the higher tariff being set for serious sexual assaults.

8. Having considered the UK Sentencing Council Guidelines, Justice Madigan, in Laca (supra), divided Sexual Assault offending into three categories.

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

Category 2

(i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

9. Touching naked vagina falls into category 2(ii) above.
10. Rape is the most serious crime in your offending. Therefore, in reaching the final sentence, I consider the Rape count (2<sup>nd</sup> Count) as the head count. By prescribing life imprisonment for Rape, the law makers expect Courts to impose harsher punishment on rape offenders.
11. The courts of the Republic of Fiji, at all levels, have repeatedly pronounced that rape of a child is one of the most serious forms of sexual violence and that rapists will be dealt with severely. The courts have underscored that children are

vulnerable members of our society. They are entitled to live their lives free from any form of physical or emotional abuse. They are entitled to trust their family member to protect them and keep them safe from sexual violence. When family members sexually abuse children, they should expect condign punishment to mark the society's outrage and denunciation against sexual abuse of children. Rape and sexual abuse of children have far-reaching consequences for not only the child victims themselves but also their families and society. The courts have emphasized that the increasing prevalence of such offending in the community calls for deterrent sentences.

12. These crimes are most prevalent in Fiji and the offenders must be punished to denounce and to send a clear message to the community that no such actions will be tolerated by courts. The offender must be severely punished to ensure safety and security of all women.
13. The main purposes of your sentence are deterrence and denunciation. Lord Denning giving evidence before the Royal Commission once said: *"the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of the citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformatory or preventive or nothing else ... The ultimate justification of any punishment is not that it is deterrent, but that it is the emphatic denunciation by the community of crime...."*
14. Bearing in mind Section 11(1) of the Constitution of the republic of Fiji and Section 4 and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.
15. In selecting the starting point, the Court must have regard to the objective seriousness of the offence. In doing so, I have considered culpability and harm factors of your offending. You have used a degree of force and committed the rape on your own young daughter. The victim suffered physically and

emotionally. Having considered the objective seriousness of the offence, harm caused to the child victim and the principles laid down in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 13 years' imprisonment as the starting point for the rape count (2<sup>nd</sup> count).

### **Aggravating Circumstances**

16. I have considered following aggravating circumstances in light of the Section 4(2) of the Sentencing and Penalties Act and guidelines set out by the Chief Justice Gates in *Ram v State* [2015] 26; CAV 12.2015 (23 October 2015).

**(a) The victim was vulnerable**

The victim was a child of 9 years of age when you raped her. She was vulnerable by reason of her age and other circumstances of the case. Victim's mother was in an extra marital affair and the victim was being looked after by her aunt and grandmother. You exploited her vulnerability.

**(b) Breach of trust**

The victim was your biological daughter. You were in a position of trust and had a duty to protect her. You have miserably failed to honour that trust.

**(c) The impact of the crime on the victim**

The impact of the crime on the victim was extremely traumatic and it is continuing. The impact of the crime on the victim is evident from the testimony of the victim, her grandmother and also from the Victim Impact Report. The acts committed by you had caused the child victim pain and injury. She was bleeding from her vagina. She had to leave school because

she could not concentrate on studies and had to be admitted to a special school to allow her to catch up on education.

**(d) The victim was exposed to sexual activity at such a tender age**

**(e) The victim lost her virginity**

You took away victim's virginity. She was bleeding from her vagina after the rape. The doctor found that her hymen was not intact.

**(f) The disparity in the age**

You were 28 years old and your daughter was only 9 years old at the time of the offence. There was an age difference of 19 years between you and the victim.

**(g) The accused tried to cover up the crime**

The victim never told anyone what happened for 5 months as she was scared. You told her not to tell mother what happened, and if she did, you will kill her.

In *Raj v State* [2014] FJCA 18; AAU0038.2010 (5 March 2014) the Fiji Supreme Court has stated that evidence that an offender has attempted to cover up his acts is a further aggravating factor.

### **Mitigating Circumstances**

17. I considered the mitigating circumstances your Counsel has submitted to this Court. The mitigating factors submitted are of very little mitigating value.

- (a). You are a 31 year old young person. You are a farmer and separated from your wife.
- (b). You are a first offender. You do not have any previous convictions.

### **Time Spent in Remand**

- 18. You were in remand approximately for 11 months. I have separately considered the remand period in discounting your sentence.

### **Sentence**

- 19. I add 3 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 16 years' imprisonment for Rape count. I deduct 1 year for mitigating factors and 1 year for remand period bringing the sentence to one of 14 years' imprisonment for the 2<sup>nd</sup> count (rape).
- 20. I pick a starting point of 3 years for the Sexual Assault count. I add 3 years for aggravating factors and deduct 2 years for mitigating factors and remand period to arrive at a sentence of 4 years imprisonment for the 1<sup>st</sup> count (Sexual Assault).
- 21. Having considered the totality and one transaction principles, I order that you serve the sentences concurrently.
- 22. You are a first and young offender. Acting under Section 18(1) of the Sentencing and Penalties Act, I order that you are eligible for parole after serving an imprisonment term of 12 years.
- 23. **Summary**

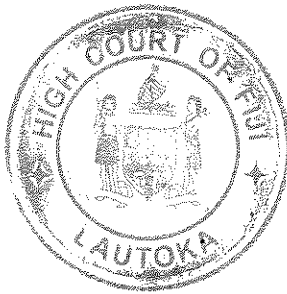
**1<sup>nd</sup> count (Sexual Assault) - 4 years' imprisonment**



2<sup>nd</sup> count (Rape) - 14 years imprisonment (to be served concurrently with the sentence of the 1<sup>st</sup> Count)

You are sentenced to 14 years' imprisonment with a non-parole period of 12 years.

24. 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge

Judge

At Lautoka

6<sup>th</sup> December, 2018

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence