

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 27 OF 2018

BETWEEN: **THE STATE**

AND: **JOTAME CIRI**

Counsel: **Ms A Vavadakua for the State**
 Ms K Boseiwaqa for the Accused

Date of Hearing: **21 June 2018**

Date of Sentence: **22 June 2018**

SENTENCE

[1] Jotame Ciri, you have freely and voluntarily pleaded guilty to two counts of rape at the first available opportunity. When the State presented the facts, you admitted having sexual intercourse with the child victim, but you disputed using force during the incidents. The victim is 12 years old. She was born on 25 July 2005. She did not have the legal capacity to give consent to sexual penetration. Consent or lack of it by a victim under the age of 13 years is irrelevant when determining the guilt of an accused. A person who sexually penetrates a child under the age of 13 years is guilty of rape regardless of whether the child victim had consented or not consented to sex. The use of force in cases of rape of a child under the age of 13 years is an aggravating factor relevant in sentencing and not in determination of the guilt of an accused. For these reasons, the Court is satisfied that your guilty pleas to the two counts of rape are informed, competent and valid. You are convicted as charged.

- [2] A *Newton* hearing was held to determine the disputed facts regarding the use of force during the two incidents of rape. The victim was called to give evidence. You elected to remain silent.
- [3] The victim is your niece – cousin sister’s daughter. At the material time you were also her guardian. After her parents had separated her maternal grandparents became her guardian. She was raped by her grandfather when she was under his care. He was convicted and imprisoned in a separate case. After the grandfather was imprisoned, you became her guardian and she moved in to reside with you at Nawailevu, Bua.
- [4] The first incident occurred on the evening of 25 February 2018. The victim was at home doing her homework when you approached her in a bath towel wrapped around your waist. In her evidence, the victim said that you removed her clothes, covered her mouth with your hand and had sexual intercourse with her. The second incident occurred on the night of 5 March 2018. You had returned home drunk. In her evidence, the victim said that you carried her into the kitchen from the bedroom, undressed her and tied her hands with a singlet. When she screamed, you gagged her mouth with your trousers and had sexual intercourse with her. She was so afraid of you that she decided not to return to your home when she came to know that you were looking for her when she was attending a village function on 18 March 2018. I accept the victim’s evidence that force was used during the two incidents of rape. She struck me as an honest and reliable witness.
- [5] On 19 March 2018, you were interviewed under caution. You admitted to sexual intercourse but said it was consensual.
- [6] You are 46 years old. At the time of the offending, you were separated from your wife. You have two children from that marriage. The children were left with you after your wife left you. The children are now 14 years and 15 years old, respectively. They are in high school and are being looked after by your elderly mother. Your counsel has placed a great deal of emphasis on your family circumstances as a mitigating factor. The consequences of your crime on your family have little mitigating value. You should have thought of your elderly mother and children before sexually abusing a young girl who was under your care.

- [7] Although you do not have a previous conviction for sexual offence, you have 10 previous convictions for assault and criminal intimidation between 2003 and 2012. You are not a first time offender. Little weight can be attached to your previous good character as a mitigating factor.
- [8] In rape cases, significant weight can be attached to a guilty plea, if it is a genuine expression of remorse. In your case, while you admitted sexual intercourse with the victim, you denied using force. In your address to the court, you claimed that you were seduced by the child victim to have sex with her. You claimed that she even proposed to marry you after she had completed her high school. The victim was not relieved from giving evidence. She had to give evidence and recollect the vile moments when you raped her. Under cross-examination she was made to feel she was lying about the force used by you when you raped her.
- [9] While you have pleaded guilty to rape, there is little evidence to show that you are genuinely remorseful for your conduct. The Court had an opportunity to see the victim when she gave evidence. Not only is she of a tender age she is of a very small physique. Your claim that you were seduced by the child victim to have sex is fanciful. Apart from your early guilty plea, there are no other mitigating factors. For your early guilty plea, I give you a discount of 2 years.
- [10] As a separate consideration, a downward adjustment is made in sentence to reflect your remand period of 3 months 1 week and 4 days.
- [11] The victim was a vulnerable person due to her age and her personal circumstances. She was abandoned by her parents when they got separated. She was raped by her grandfather when she was under his care. You knew about her circumstances. You were entrusted with her when her grandfather was jailed. Instead of protecting her, you treated her as an object of your lust. The second incident had sadistic features – tying the victim's hands, gagging her mouth with cloth and sexually penetrating her. You exploited her vulnerability and ruined her innocence. You raped her not once, but twice. You grossly breached the victim's trust who was your niece. She had to be re-

allocated to live with another family. These are some compelling aggravating features.

- [12] The seriousness of rape is reflected in its maximum penalty. The maximum penalty is life imprisonment. The tariff for rape of a child is 10-16 years' imprisonment (*Raj v State* [2014] FJSC 12; CAV0003.2014 (20 August 2014)).
- [13] Time and again the courts have warned public that sexual violence on children will not be condoned. The courts have a duty to protect children from any form of sexual violence. Children have a right to live their lives with dignity, free from abuse or violence. Children who are raped by their family members should expect condign punishment to mark the society's outrage against such offences.
- [14] Bearing all these factors into account, I sentence you to 12 years' imprisonment on each count of rape, to be served concurrently. You are not eligible for parole until you have served 10 years. Since you had custody of your two children after your wife had left you, I recommend the Department of Social Welfare to attend to your children's welfare until they turn 18 years of age.
- [15] The offence you committed constitutes domestic violence under the Domestic Violence Act. You are issued with a permanent Domestic Violence Restraining Order (DVRO) with standard no contact and no molestation conditions. The DVRO is necessary to protect the victim in future from you. The DVRO will remain active until you are living. If you breach the DVRO, you may be charged with the offence of breaching a DVRO.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused