

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 124 OF 2016**

**STATE**

**-v-**

**OSEA CAWI**

**Counsel : Ms S. Navia / Ms S. Alagenda for State**

**: Ms K. Vulimainadave for Accused**

**Date of Judgment : 19 September 2018**

**Date of Sentence : 10 October 2018**

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

**SENTENCE**

1. Mr. Osea Cawi, you stand convicted of one count of Rape after a full defended trial. The information on which you were convicted reads as follows:

### *Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Decree No. 44 of 2009.

### *Particulars of Offence*

**OSEA CAWI** on the 07<sup>th</sup> day of June, 2016 at Sigatoka in the Western Division penetrated the vagina of **LV** a child under the age of 13 years by inserting his finger into the vagina of the said **LV**.

2. You now come before this Court for sentence.
3. You are a 30 year-old mature person at the time of the offence. You are related to the victim as her uncle. The victim was 4 years of age at the time of the offence. The victim came to your room when you were patching a whole on your trouser. She came to you trusting you as her elderly uncle and lied down beside you on the mattress. You inserted your finger into her vagina and then chased her away. She described the experience as painful. The victim relayed the incident to her mother when blood stains were noted in her panty. The matter was reported to police on the same day. The victim was medically examined. The doctor who examined the victim noted injuries and blood in her vagina consistent with a digital penetration.
4. The maximum penalty for Rape is life imprisonment.
5. Tariff for juvenile rape is 10-16 years' imprisonment. (Anand Abhay Raj CAV003.2014 )
6. Rape is a serious crime. By prescribing life imprisonment for Rape, the law makers expect the courts to impose harsher punishment on rape offenders. Rape of children is a very serious offence and it seems to be very prevalent in Fiji. Courts and the society cannot condone any form of sexual assault on children. Not only the offender himself but the potential offenders must also be deterred.

The sentence must send a clear warning to the society. The offender must be severely punished and be incarcerated to ensure that our younger generation is safe and secure.

7. The main purposes of your sentence are deterrence and denunciation. However, I am mindful of your youth and chances of rehabilitation.
8. You used force on a child of tender age. The offending is very serious. Having considered the seriousness of the offence and the harm caused to the young victim, I pick 11 years' imprisonment as the starting point. In selecting the starting point I also considered the prevalence in Fiji of a large number of sexual offences committed against children. According to the statistics published by the Office of Director of Public Prosecutions, in first eight months of this year alone, 150 cases of sexual offences have been reported. Out of those, 62 offences have been committed against children under the age of 13. In gauging the seriousness of the offence, it is time to look at those statistics suggested by the Supreme Court recently in *Alfaaz v State* [2018] FJSC 17; CAV0009.2018 (30 August 2018).
9. **Aggravating Circumstances**
  - The victim came to your room trusting you as her elderly uncle. You breached her trust.
  - Complainant was 4 years of age when the offence was committed. You were a 30-year old mature person at that time. The age gap between you and the victim is more than 25 years.
  - The victim suffered pain. According to the Victim Impact Statement, the victim has suffered emotionally and psychologically.
10. **Mitigating Circumstances**
  - You admitted the offence at the police interview and co-operated with police.

- You are a first offender and have maintained a clear record thus far.
- You seek leniency of this court and a chance to rehabilitate.

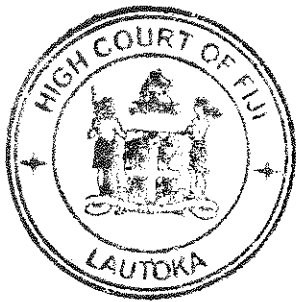
11. You have not saved the young victim from giving evidence and reliving the ordeal. The State Counsel has submitted to me that your conduct at the trial (in instructing your counsel to object to the application made by the State Counsel under Section 134 of the Criminal Procedure Act to read the victim's statement to police in evidence-in-chief) should be considered against you in sentencing. However, I do not consider the exercise of your legal right as an aggravating factor because your Counsel, as a responsible defence counsel, ensured that the child victim is not re-traumatized in the process of cross-examination. Defence Counsel's cross-examination indeed helped this court to ascertain the truth, observe victim's demeanor and also her testimonial competency while ensuring a fair trial to the accused. However, you will not get any discount in view of your lack of remorse.
12. You are a 33 year-old first offender. You were looking after your elderly parents as the sole breadwinner of the family. It is unfortunate that you have committed this offence ruining the rest of your life. I have considered your personal circumstances and the character reference from the church in mitigating your sentence.
13. I add 2 years to the starting point for above mentioned aggravating factors bringing the interim sentence to 13 years' imprisonment. I deduct 1 year for mitigating factors bringing the sentence to one of 12 years' imprisonment.
14. You had been in remand for approximately 9 months. I further deduct 9 months to reflect your remand period. Your final sentence is 11 years and 3 months imprisonment.
15. You are a first offender. I considered your personal circumstances and chances of rehabilitation as a first offender. In view of the foregoing, I, acting under Section

18 (1) of the Decree, order that you are eligible for parole after serving an imprisonment term of 10 years.

16. **Summary**

**You are sentenced to 11 years and 3 months imprisonment with a non-parole period of 10 years.**

17. 30 days to appeal to the Fiji Court of Appeal.



Aruna Aluthge

Judge

At Lautoka

10<sup>th</sup> October, 2018

**Counsel:**

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