IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 259 of 2018

STATE

V

RATU SELA DRADRA MATIA

Counsel	:	Ms. Kimberly Semisi for the State Ms. Litiana Ratidara with Ms. Ruci Nabainivalu for the Accused

Dates of Trial	:	8-12 July 2019
Summing Up	:	15 July 2019
Judgment	:	17 July 2019
Sentence Hearing	:	19 September 2019
Sentence	:	21 October 2019

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "BVS".

SENTENCE

[1] Ratu Sela Dradra Matia, you have been found guilty and convicted of the following offences for which you were charged:

COUNT 1

Statement of Offence

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

Particulars of Offence

RATU SELA DRADRA MATIA, between the 1st day of January 2017 and the 31st day of December 2017, at Kadavu, in the Southern Division, had carnal knowledge of BVS, a child under the age of 13 years.

COUNT 2

Statement of Offence

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

Particulars of Offence

RATU SELA DRADRA MATIA, between the 1st day of January 2017 and the 31st day of December 2017, at Kadavu, in the Southern Division, unlawfully and indecently assaulted BVS, a child under the age of 13 years, by kissing her mouth, touching her breasts and biting her breasts.

COUNT 3

Representative Count

Statement of Offence

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

Particulars of Offence

RATU SELA DRADRA MATIA, between the 1st day of January 2017 and the 31st day of December 2017, at Kadavu, in the Southern Division penetrated the vagina of BVS, a child under the age of 13 years, with his tongue.

COUNT 4

Statement of Offence

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

Particulars of Offence

RATU SELA DRADRA MATIA, on the 9th day of June 2018, at Kadavu, in the Southern Division, penetrated the vagina of BVS, a child under the age of 13 years, with his fingers.

[2] You pleaded not guilty to the above mentioned charges and the ensuing trial was held over 5 days. The complainant (BVS), the Head Teacher of her school, Iosefo Vuloaloa Nabi, a Medical Officer, Dr. Marshanell Veronica Leong and one police witness, WPC 4632 Miliana, testified on behalf of the prosecution.

[3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found you guilty of the four charges. Having reviewed the evidence, this Court decided to accept the unanimous opinion of the Assessors. Accordingly, this Court found you guilty and convicted you of the said four charges.

[4] It was proved during the trial that, between 1 January 2017 and 31 December 2017, at Kadavu, you penetrated the vagina of BVS, with your penis, and at the time BVS was a child under 13 years of age.

[5] It was proved during the trial that, between 1 January 2017 and 31 December 2017, at Kadavu, you unlawfully and indecently assaulted BVS, a child under 13 years of age, by kissing her mouth and biting her breasts.

[6] It was also proved during the trial that, between 1 January 2017 and 31 December 2017, at Kadavu, you penetrated the vagina of BVS, with your tongue, and at the time BVS was a child under 13 years of age.

[7] It was further proved during the trial that, on the 9 June 2017, at Kadavu, you penetrated the vagina of BVS, with your fingers, and at the time BVS was a child under 13 years of age.

[8] The complainant is your niece, and you were staying in the same village.

[9] As per her birth certificate tendered to Court as Prosecution Exhibit PE2, the complainant's date of birth is 27 January 2009. Therefore, during the period 1 January 2017 and 31 December 2017, she would have been 8 years of age and, as at 9 June 2018, she would have been 9 years old.

[10] The complainant clearly testified to all the acts that you had perpetrated on her. I have summarized the complainant's evidence at length in my summing up.

[11] In terms of the Victim Impact Assessment Report filed in Court, it is recorded that the complainant has been emotionally and psychologically traumatized by your actions. She finds it difficult to maintain concentration. She is still traumatized about the incident and she still has deep fear of you. She feels betrayed by her own uncle (yourself) which has made her uncomfortable with any male adult that she comes in contact with.

[12] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.

[13] The offence of Rape in terms of Section 207(1) of the Crimes Act No. 44 of 2009 ("Crimes Act") carries a maximum penalty of imprisonment for life.

[14] The severity of the offence of Rape was highlighted by the Fiji Court of Appeal in the case of ***Mohammed Kasim v. The State*** [1994] FJCA 25; AAU 21 of 93 (27 May 1994); where it was stated:

> *"....It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage."*

[15] In the case of ***State v. Marawa*** [2004] FJHC 338; HAC 16T of 2003S (23 April 2004); His Lordship Justice Anthony Gates stated:

> *"Parliament has prescribed the sentence of life imprisonment for rape. Rape is the most serious sexual offence. The Courts have reflected increasing public intolerance for this crime by hardening their hearts to offenders and meting out harsher sentences".*
>
> *"A long custodial sentence is inevitable. This is to mark the gravity of the offence as felt, and correctly so, by the community. Imprisonment emphasizes the public's disapproval and serves as a warning to others who may hitherto regard such acts lightly. One must not ignore the validity of the imposition of condign punishment for serious crime. Lastly the sentence is set in order to protect women from such crimes:* ***Roberts and Roberts*** *(1982) 4 Cr. App R(S) 8;* ***The State v Lasaro Turagabeci and Others*** *(unreported) Suva High Court Crim. Case No. HAC0008.1996S."*

[16] In ***The State v Lasaro Turagabeci and Others*** (supra) Pain J had said:

> *"The Courts have made it clear that rapists will be dealt with severely. Rape is generally regarded as one of the gravest sexual offences. It violates and degrades a fellow human being. The physical and*

emotional consequences to the victim are likely to be severe. The Courts must protect women from such degradation and trauma. The increasing prevalence of such offending in the community calls for deterrent sentences."

[17] His Lordship Justice Daniel Goundar, in the case of ***State v. AV*** [2009] FJHC 24; HAC 192 of 2008 (2 February 2009); observed:

"....Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences".

[18] In the case of ***State v. Tauvoli*** [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

"Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound."

[19] His Lordship Justice Goundar in ***State v Apisai Takalaibau*** – Sentence [2018] FJHC 505; HAC 154 of 2018 (15 June 2018); making reference to statistics of Aggravated Burglary cases filed in the High Court in 2017 and 2018, stated that "A factor that influences sentencing is the prevalence of the offence in the community.....The more prevalent is an offence, the greater the need is for deterrence and protection of the community."

[20] This has been affirmed by the Supreme Court in ***Alfaaz v. State*** [2018] FJSC 17; CAV0009.2018 (30 August 2018); where it was recognized that the prevalence of cases of child rape calls for harsher punishments to be imposed by Courts. Their Lordships held:

"According to the statistics released by the Director of Public Prosecutions Office it appears that a number of rape victims as well as victims under the age of 18 years and victims in domestic relationships or relatives were also victims of other serious sexual offences. The rape of children is a very serious offence and it is very frequent and prevalent in Fiji. The courts must impose harsh penalties dictated by the legislation. The courts should not leniently look at this kind of serious cases of rape of children of tender years when punishing the offenders."

[21] In the case of ***Anand Abhay Raj v. The State*** [2014] FJSC 12; CAV 0003 of 2014 (20 August 2014); Chief Justice Anthony Gates (with Justice Sathyaa Hettige and Madam Justice Chandra Ekanayake agreeing) endorsed the view that Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the acceptable range of sentences or sentencing tariff is between 10 and 16 years imprisonment.

[22] However, in the recent case of ***Aitcheson v State*** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018); His Lordship Chief Justice Gates stated that the sentencing tariff for the Rape of a juvenile should now be increased to between 11 and 20 years imprisonment. His Lordship held:

> *"The tariff previously set in **Raj v The State** [2014] FJSC 12 CAV0003.2014 (20th 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."*

[23] In determining the starting point within the said tariff, the Court of Appeal, in ***Laisiasa Koroivuki v. State*** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

> *"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."*

[24] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 11 years imprisonment for the first count of Rape.

[25] The aggravating factors are as follows:

(i) You were the uncle of the complainant. Being so, you should have protected her. Instead you have breached the trust expected from you and the breach was gross.

(ii) There was a large disparity in age between you and the complainant. The complainant was 8 years of age at the time you first committed these offences on her. At the time you were about 43 years of age. Therefore, there was a difference in age of nearly 35 years.

(iii) You took advantage of the complainant's vulnerability, helplessness and naivety.

(iv) You have exposed the innocent mind of a child to sexual activity at such a tender age.

(v) You are now convicted of multiple offending.

[26] Ratu Sela Dradra Matia, you are now said to be 45 years of age. You are said to be separated from your wife and residing at Kabariki Village, Nabukelevu, Kadavu. You are said to be farmer by occupation supporting your elderly mother, sister and three nephews. However, these are all personal circumstances and cannot be considered as mitigating circumstances.

[27] As per the Antecedent Report filed, it is noted that there are nil previous convictions recorded against you. The State Counsel too has confirmed that you are a first offender and have no pending cases. Therefore, Court considers you as a person of previous good character.

[28] Considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence is 16 years imprisonment for count one. For your previous good character I reduce 2 years from your sentence. Now your sentence is 14 years for count one.

[29] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 11 years imprisonment for the third count of Rape. Considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence is 16 years imprisonment for count three. For your previous good character I reduce 2 years from your sentence. Now your sentence is 14 years for count three.

[30] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 11 years imprisonment for the fourth count of Rape. Considering the aforementioned aggravating factors, I increase your sentence by a further 5 years. Now your sentence is 16 years imprisonment for count four. For your previous good character I reduce 2 years from your sentence. Now your sentence is 14 years for count four.

[31] You have been convicted of one count of Sexual Assault in terms of Section 210(1) (a) of the Crimes Act (Count 2).

[32] The offence of Sexual Assault in terms of Section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[33] In the cases of ***State v. Abdul Khaiyum*** [2012] FJHC 1274; Criminal Case (HAC) 160 of 2010 (10 August 2012) and ***State v. Epeli Ratabacaca Laca*** [2012] FJHC 1414; HAC 252

of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of Section 210 (1) of the Crimes Act.

[34] It was held in ***State v Laca*** (supra) "The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks."

> "A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide 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 part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)."

[35] In this case it has been proven that you unlawfully and indecently assaulted the complainant by kissing her mouth and biting her breasts. In my opinion, this would clearly come under category 3 above. As such, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 2 years imprisonment for the offence of Sexual Assault, in count two.

[36] Considering the aggravating factors aforementioned, I increase your sentence by a further 5 years. Now your sentence is 7 years imprisonment. For your previous good character I reduce 2 years from your sentence. Now your sentence is 5 years for count two.

[37] Accordingly, I sentence you to 5 years imprisonment for the offence of Sexual Assault (Count 2).

[38] In the circumstances, your sentences are as follows:

Count 1 – Rape contrary to Section 207 (1), 2(a) and 3 of the Crimes Act – 14 years imprisonment.

Count 2 - Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act – 5 years imprisonment.

Count 3 – Rape contrary to Section 207 (1), 2(b) and 3 of the Crimes Act – 14 years imprisonment.

Count 4 – Rape contrary to Section 207 (1), 2(b) and 3 of the Crimes Act – 14 years imprisonment.

I order that all four sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 14 years.

[39] Accordingly, I sentence you to a term of imprisonment of 14 years imprisonment.

The imposing of a non-parole period

[40] Section 18 of the Sentencing and Penalties Act stipulates the provisions for fixing a non-parole period by the sentencing Court. For ease of reference the Section, in its entirety, is reproduced below.

"18. — (1) Subject to sub-section (2), when a court sentences an offender to be imprisoned for life or for a term of 2 years or more ***the court must fix*** *a period during which the offender is not eligible to be released on parole.*

(2) If a court considers that the nature of the offence, or the past history of the offender, make the fixing of a non-parole period inappropriate, ***the court may decline to fix*** *a non-parole period under sub-section (1).*

(3) If a court sentences an offender to be imprisoned for a term of less than 2 years but not less than one year, ***the court may fix*** *a period during which the offender is not eligible to be released on parole.*

(4) Any non-parole period fixed under this section must be at least 6 months less than the term of the sentence.

(5) If a court sentences an offender to be imprisoned in respect of more than one offence, any non-parole period fixed under this section must be in respect of the aggregate period of imprisonment that the offender will be liable to serve under all the sentences imposed.

(6) In order to give better effect to any system of parole implemented under a law making provision for such a system, a court may fix a non-parole period in relation to sentences already being served by offenders, and to this extent this Decree may retrospective application.

(7) Regulations made under this Decree may make provision in relation to any procedural matter related to the exercise by the courts of the power under sub-section (6)."

Emphasis is my own.

[41] The provisions of this Section are very clear and unambiguous. Sub-section 18 (1) provides that when a Court sentences an offender to be imprisoned for life or for a term of 2 years or more the Court must fix a period during which the offender is not eligible to be released on parole. However, this is subject to sub-section 18 (2).

[42] In terms of sub-section 18 (2), the Court may decline to fix a non-parole period under sub-section (1), if the Court considers that the nature of the offence, or the past history of the offender, makes the fixing of a non-parole period inappropriate.

[43] Therefore, sub-section 18 (1) is a mandatory provision of law, and envisages that **Court must fix** a non-parole period, when sentencing an offender to be imprisoned for life or for a term of 2 years or more. However, this is subject to sub-section 18 (2), where **the Court may decline to fix** a non-parole period under sub-section (1), if the Court considers that the nature of the offence, or the past history of the offender makes the fixing of a non-parole period inappropriate.

[44] Sub-section 18 (1) can be distinguished from sub-section 18 (3), which provides that **the Court may fix** a period during which the offender is not eligible to be released on parole where the Court sentences an offender to be imprisoned for a term of less than 2 years but not less than one year.

Emphasis is again my own.

[45] In the recent case of ***Nacani Timo v State*** [2019] FJSC 22; CAV0022.2018 (30 August 2019); the Supreme Court discussed, inter alia, the issues pertaining to the fixing of non-parole periods. Accordingly, their Lordships held:

26. It is quite clear that in the matter of fixing a non-parole period, the discretion given to a Court is extremely wide.....

27. The Sentencing and Penalties Act 2009 also gives no guidance to a Court as to when and in which category of cases a non-parole period should be fixed or not fixed. Therefore, a question arises: What should be the procedure, in accordance with the requirements of justice, that a Court should adopt for awarding (if at all) a non-parole period to a convict?

28. This question is important because the effect of a Court directing a non-parole period on a convict is that the convict cannot be released prior to completion of the non-parole period. This could impact on the delivery and administration of justice in several ways – not only for the convict through a curtailment of his or her human right of personal liberty, but also for the Executive through a curtailment of its statutory power of granting remission and encroaching on its powers of early release of prisoners under the Corrections Service Act 2006 read with the Corrections Service Regulations 2011. It could also have an impact on society and its safety and well-being.

.....

34. When the Court fixes a non-parole period (although it may not) it effectively interdicts the release of the convict for a determinate period. The personal liberty of a convict is curtailed by an order of the Court through the exercise of power of fixing a non-parole period. This is quite a drastic power and to make it reasonable, it should be exercised by a Court after giving the convict an opportunity of having a say to enable him or her to persuade the Court to not fix any non-parole period or at worst a short non-parole period.....

.....

36. Essentially the grant of parole is within the domain of the Executive as is evident from the Corrections Service Act 2006. However, this power can be restricted by the Courts through Section 18 of the Sentencing and Penalties Act 2009. Merely because a dominant power has been conferred on the Courts does not imply that the Courts "must" exercise that power. This is made clear by Section 18(2) of the Corrections Service Act 2006 (Sentencing and Penalties Act). Therefore, the legislative mandate is that the primary power to grant parole is vested in the Executive, but the Courts have been given the authority to restrict it. Consequently, the power to fix a non-parole period should be exercised by the Courts in exceptional cases and circumstances and where that power is exercised it must be preceded by a hearing and supported by reasons, an important aspect of natural justice as far as it concerns a person whose personal liberty is being curtailed or taken away and as far as it concerns the Executive whose power to grant parole is curtailed or taken away.

37. In exercising the authority of fixing a non-parole period, the Court is, in a sense, circumscribing the exercise of power by the Parole Board and the Minister under the Corrections Service Act 2006. There may well be an extraordinary case in which the Parole Board and the Minister are of opinion that the convict is deserving of parole, but their hands would be tied because of an order of the Court fixing a non-parole period. This could amount to encroaching or subverting the discretionary power given by law to the Parole Board and the Minister, which the Courts would be loathe to do. It is for this reason that the Courts should be cautious and circumspect. This is not to say that the Courts should not fix a non-parole period in any case, but that the Courts may do so in exceptional cases and circumstances and after following a set procedure.

38. The sum and substance of this discussion is that enabling a convict to avail parole is negatively conferred on the Judiciary (through declining to fix a non-

parole period) and positively on the Executive by granting parole. Applying the doctrine of the separation of powers, the Judiciary should be circumspect and use its authority to fix a non-parole period in exceptional cases and where it is absolutely necessary to do so and in accordance with a just, fair and reasonable procedure.

[46] The Supreme Court then went on to make the following conclusions:

54. The following conclusions emerge from a review of the decisions of the Courts and the laws:

(i) Parole and remission are distinct concepts and are not rights but entitlements that a prisoner must earn.

(ii) It is not mandatory for a Court to award a non-parole period to every convict. However, a decision to award or decline to award a non-parole period must be taken by a Court after hearing a convict and the decision must be accompanied by reasons, with an economy of words, as a part of a just, fair and reasonable procedure keeping the interests of the convict and society (including the victim) in mind.

(iii) The period of remission earned by a convict during the non-parole period is kept dormant or in abeyance during that period. The remission period is not wiped out and there is no law even suggesting a wipe-out. Consequently, a convict must be given the benefit of remission (if earned) when it is due on the total sentence and not the head sentence. The present practice on the subject followed to the contrary by the Commissioner, as evident from the communication dated 23rd July, 2019 is not supported by legislation and ought to be discontinued forthwith.

Emphasis is mine.

[47] Although, as I have mentioned earlier, the provisions of Section 18 of the Sentencing and Penalties Act were clear and unambiguous and required no further interpretation, the Supreme Court, the highest Court in our land, has interpolated further conditions which a sentencing Court should now consider prior to fixing a non-parole period. I am of the view that I am bound by this judgment of the Supreme Court.

[48] Therefore, considering the provisions of the legislation (Section 18 of the Sentencing and Penalties Act) and the judgment of the Supreme Court cumulatively, the following factors emerge:

1. Fixing of a non-parole period should be exercised by the Courts in exceptional cases.

2. The decision to fix or decline to fix a non-parole period must be taken by a Court after hearing the convict.

3. The decision to fix or decline to fix a non-parole must be accompanied by reasons.

[49] As to the first factor, the Supreme Court has not provided any guidance as to what would fall under the category of "exceptional cases". Thus, the sentencing Court would have a wide discretion in deciding on this. In my view, there would be no prohibition in Court considering the very same factors that it considered in arriving at the final sentence against the convict. This could include, inter-alia, the nature and gravity of the particular offence, the offender's culpability and degree of responsibility for the offence, the impact of the offence on any victim and the injury, loss or damage resulting from the offence, and the aggravating circumstances relevant to the commission of the offence.

[50] As to the second factor, the hearing of the convict or his or her counsel can be done during the course of the sentencing hearing. In my view, no separate hearing would be required.

[51] As to the final factor, the Supreme Court has itself dictated that the accompanying reasons should be set out with an economy of words, as a part of a just, fair and reasonable procedure, keeping the interests of the convict and society (including the victim) in mind. Where the Court determines that the fixing of a non-parole period is inappropriate, the provisions of sub-section 18 (2) of the Sentencing and Penalties Act could be referred to as justification for doing so. The sub-section provides that the Court may decline to fix a non-parole period under sub-section 18 (1), if the Court considers that the nature of the offence, or the past history of the offender, deems it appropriate to do so.

[52] Further, it is also my opinion that the factors that a Court would be taking into account or considering in determining the first and third factors above, would usually overlap.

[53] Coming back to the instant case, I am of the opinion that considering all the facts and circumstances of this case as already referred to in this sentence, this is an appropriate case to fix a non-parole period to be served by the accused. During the sentencing hearing the Learned State Counsel and the Defence Counsel submitted to Court, that no non-parole period should be fixed as there are no exceptional circumstances that warrant same. I totally disagree with this submission.

[54] Accordingly, Ratu Sela Dradra Matia, pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 12 years of your sentence.

[55] Section 24 of the Sentencing and Penalties Act reads thus:

> *"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the*

matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

[56] You were in remand custody for this case from 16 June 2018. Accordingly, you have been in custody for a period of 16 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 16 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[57] In the result, your final sentence is as follows:

Head Sentence	-	14 years imprisonment.
Non-parole period	-	12 years imprisonment.

Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence	-	12 years and 8 months imprisonment.
Non-parole period	-	10 years and 8 months imprisonment.

[58] You have 30 days to appeal to the Court of Appeal if you so wish.

Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA
Dated this 21st Day of October 2019

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Accused : **Office of the Legal Aid Commission, Suva.**