

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

**Crim. Case No: HAC 75 of 2018**

**BETWEEN:** STATE

**PROSECUTION**

**A N D:** KITIONE LAGIVALA

**ACCUSED PERSON**

**Counsel** : Ms. A. Vavadakua for the State  
: Mr. J. Korotini for Accused

**Date of Hearing** : 13<sup>th</sup> February 2019

**Date of Sentence** : 05<sup>th</sup> March 2019

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## **SENTENCE**

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1. Mr. Kitione Lagivala, you have been convicted by the learned Magistrate in his judgment dated 5th of October 2018 for three counts of Rape, contrary to Section 149 and 150 of the Penal Code. The particulars of the offences are that:

***FIRST COUNT***

*Statement of Offence(a)*

**RAPE:** *Contrary to Section 149 and 150 of Penal Code Cap. 17.*

*Particulars of Offence (b)*

**KITIONE LAGIVALA** on the 31<sup>st</sup> day of October 2005 at Cabeu Settlement, Naravuka, Seaqaqa in the Northern Division, had unlawful carnal knowledge of a woman namely **MERE VEREIVALU** without her consent.

**SECOND COUNT**

*Statement of Offence*

**RAPE:** Contrary to Section 149 and 150 of Penal Code Cap 17.

*Particulars of Offence*

**KITIONE LAGIVALA**, on the 1<sup>st</sup> day of November, 2005, at Cabeu Settlement, Naravuka, Seaqaqa in the Northern Division, had unlawful carnal knowledge of a woman namely **MERE VEREIVALU** without her consent.

**THIRD COUNT**

*Statement of Offence (a)*

**RAPE:** Contrary to Section 149 and 150 of Penal Code Cap 17.

*Particulars of Offence*

**KITIONE LAGIVALA**, on the 02<sup>nd</sup> day of November, 2005, at Cabeu Settlement, Naravuka, Seaqaqa in the Northern Division, had unlawful carnal knowledge of a woman namely **MERE VEREIVALU** without her consent.

2. Having found you guilty to the said three counts, the learned Magistrate has transferred this matter to the High Court pursuant to Section 190 of the Criminal Procedure Act for sentencing.

3. It has been proved during the course of the hearing that you have forcefully penetrated into the vagina of the complainant with your penis without her consent on three different occasions on the 31st of October 2005, 1st of November 2005 and 2nd of November 2005 respectively. The Complainant was seventeen years old at that time and staying at your place in order to attend to school. You have committed these crimes on her, when you were alone with the complainant at home in the night.
4. Rape is one of the most humiliating and distressing crimes. It becomes more serious when it is involved with a juvenile victim and the perpetrator is closely known to the complainant. Hence, I find the rape in this nature is a very serious crime. In this case, the complainant was sexually abused by a person who is known to her. This form of sexual exploitation of children by the known adult is a serious offence.
5. In view of the seriousness of this offence, it is my opinion that such offenders must be dealt with severe and harsh punishment. Hence, the purpose of this sentence is founded on the principle of deterrence and protection of community. Moreover, the court must demonstrate in sentencing that the offenders of this nature are socially abhorrent.

### **Tariff**

6. Hon. Chief Justice Gates in **Aitcheson v State ( [2018] FJSC 29; CAV0012.2018 (2 November 2018)**) held that the tariff for rape of a child is between 11 -20 years' imprisonment period. The tariff that was in force for the offence of rape in 2005 ranges from 7 years to 15 years **(State v Marawa[2004] FJHC 338; HAC 0016T.2003S (23 April 2004), The State v Navauniani Koroi (unreported) Cr. App Case No. HAA0050.2002S, The State v Samu Seru (unreported) Suva Crim. Case No. HAC0021.2002S,**
7. All of these offences are founded on the same series of offending of same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence for all of

these offences pursuant to Section 17 of the Sentencing and Penalties Act. Section 17 of the Sentencing and Penalties Act states that:

*“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.”*

### **Level of Harm and Culpability**

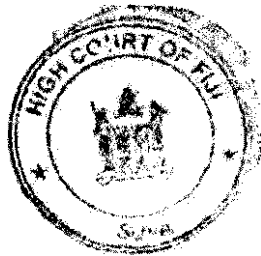
8. The complainant was seventeen years old student when these incidents took place. She had stayed at your house in order to attend to school. You have found opportunities where the complainant was alone at home in the mid night and then approached her and committed these crimes on her. I find this is an opportunistic crime. Moreover, you have threatened the complainant stating that if she tells anyone about these incidents, you would do something to her. Hence, I find the level of harm and culpability in this matter is significantly high.

### **Aggravating and Mitigating Factors**

9. You have breached the trust that the complainant had in you. Not only the complainant, but her parent also had trusted you and kept her at your house as it was convenient for her to attend to school. Instead of honouring the said trust, you chose to sexually abuse her in order to satisfy your disgraceful sexual desire. The complainant was seventeen (17) years old and you were fifty three (53) years old in 2005. The age difference between you and the complainant was substantially high. By committing this crime, you have exposed the complainant to sexual activities, at the very young age, thus preventing her to have a natural growth of maturity in her life.

10. It has proved during the course of the hearing that you have approached the father of the complainant and threatened him, demanding to withdraw this complain, otherwise, you would chase him out of the village. By doing that you have tried to prevent the complainant to get the justice for these dreadful offences that you have committed on her.
11. I consider these grounds as aggravating factors in this offending.
12. The learned counsel for the defence in her mitigation submissions submitted your personal and family background, which I do not find any mitigatory value.
13. The learned counsel for the defence submitted in her submission that you are a first offender, hence, you are entitled to a substantive discount.
14. Having taken into consideration the seriousness of the offence, the level of culpability and the harm, the aggravating and mitigating factors, I am of the view that an aggregate sentence of 14 years would serve the purpose of this sentence.
15. This matter was first initiated in the Magistrate's Court on the 27th of June 2008. Subsequent to a protracted delay in the proceedings, the hearing was concluded and judgment was delivered on the 5th of October 2018. According to the record of the proceedings in the Magistrate's Court, I do not find that the accused has contributed to this delay. Hence, this is systemic delays that have prevented the accused to have his matter heard within a reasonable time. Hence, I find that the delay of nearly ten years have breached the rights of the accused to have his trial heard within a reasonable time. In order to compensate the accused for this protracted delay, I reduce 4 years from the above sentence and reach the final aggregate sentence of ten (10) years imprisonment.
16. Having taken into consideration the long delay in this proceeding, and the purpose of this sentence, I fix a non-parole period of three (3) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

17. Accordingly, I sentence you for a period of ten (10) years to the three counts of Rape as charged and you are not entitled for any parole for a period of three (3) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
18. Thirty (30) days to appeal to the Fiji Court of Appeal.



R.D.R.T. Rajasinghe  
**Judge**

At Suva  
05<sup>th</sup> March 2019

Solicitors  
Office of the Director of Public Prosecutions for the State.  
Office of the Legal Aid Commission for the Defence.