

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

**Criminal Case No.: HAC 196 of 2015**

**STATE**

**V**

**LAISIASA KURINAQAU**

**Counsel** : Ms. R. Uce for the State.  
: Ms. E. Radrole with Ms. S. Ali for the Accused.

**Dates of Hearing** : 03 and 04 July, 2019  
**Closing Speeches** : 08 July, 2019  
**Date of Summing Up** : 08 July, 2019  
**Date of Judgment** : 09 July, 2019  
**Date of Sentence** : 26 July, 2019

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**SENTENCE**

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*(The name of the complainant is suppressed she will be referred to as "KL").*

1. In a judgment delivered on the 9<sup>th</sup> July, 2019 this court found the accused guilty of one count of rape, one representative count of rape and one representative count of indecent assault as per the following information:

**COUNT ONE**

***Statement of Offence***

**RAPE**: Contrary to section 207 (1) and (2) (a) and (3) of the Crimes Act No. 44 of 2009.

***Particulars of Offence***

**LAISIASA KURINAQAU**, on the 13<sup>th</sup> of November, 2015, at Sigatoka in the Western Division penetrated the vagina of “**KL**” an 8 year old child with his penis.

**COUNT TWO**

**REPRESENTATIVE COUNT**

***Statement of Offence***

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

***Particulars of Offence***

**LAISIASA KURINAQAU**, between the 1<sup>st</sup> day of September and the 13<sup>th</sup> day of November, 2015, at Sigatoka in the Western Division penetrated the vagina of “**KL**” an 8 year old child with his tongue.

**COUNT THREE**

**REPRESENTATIVE COUNT**

***Statement of Offence***

**INDECENT ASSAULT**: Contrary to section 212 (1) of the Crimes Act No. 44 of 2009.

***Particulars of Offence***

**LAISIASA KURINAQAU**, between the 1<sup>st</sup> day of September and the 13<sup>th</sup> of November, 2015, at Sigatoka in the Western Division unlawfully and indecently assaulted “**KL**” an 8 year old child by touching her vagina.

2. The brief facts were as follows:

On Friday 13<sup>th</sup> November, 2015 the victim who was 8 years of age was playing with her friends in the village when the accused came and grabbed her and forcefully took her to his house.

3. Inside his house the accused cello taped the victim’s mouth and tied her hands with a rope, after removing her clothes the accused inserted his penis

into her vagina. At this time the accused also touched the victim's vagina. As a result of what the accused did the victim was scared, felt lonely and started feeling pain.

4. The victim did not tell anyone because the accused had threatened her if she told anyone about what he had done to her he will do it again. Thereafter on a Monday the victim was again playing with her friends, when she saw the accused she ran, but he was able to grab her and take her to his house.
5. Inside his house the accused cello taped the victim's mouth, removed her clothes and inserted his tongue into the victim's vagina. In November, 2015 the accused had also touched the victim's vagina and inserted his tongue into the victim's vagina over a period of three days.
6. The matter was reported to the police, the accused was caution interviewed he admitted committing the offences as alleged.
7. Both counsel filed sentence and mitigation submissions including the victim impact statement for which this court is grateful.
8. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
  - a) The accused was 51 years of age at the time of the offending;
  - b) He is a first offender;
  - c) Self-employed carpenter;
  - d) He is sickly and epileptic (no medical report was provided);
  - e) Provides for his elder brother's children.
9. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj vs. the State, CAV 0003 of 2014* that the personal circumstances and

family background of an accused person has little mitigatory value in cases of sexual nature.

10. The aggravating factors are:

a) Breach of trust

The victim and the accused were known to each other since they resided in the same village. The accused breached the trust of this child by grabbing her and forcefully taking her to his house and engaging in unlawful sexual activities.

b) Injuries caused to the victim

As a result of what the accused did the victim received ½ cm long laceration on her vagina.

c) Vulnerable victim

The accused knew the victim was vulnerable and unsuspecting when he carried out these unlawful acts.

d) Age difference

The victim was 8 years of age and the accused was 51 years at the time of the offending. The age difference is substantial.

e) Exposing a child to sexual activity

The accused had exposed an 8 year old child to sexual activity when the child should be playing with her friends and enjoying her life the accused robbed her of her innocence and exposed her to an unexpected and uncalled experience.

f) Victim impact statement

According to the victim impact statement the victim's life has changed after the incidents – she lost concentration in school, keeps away from her friends, blames herself for what had happened. The victim gets memories or flash backs whenever she plays at the same spot or goes past the accused's house. The victim impact statement was served on the defence, it is submitted by the accused that this court disregard the contents of the victim impact statement since no evidence was led in respect of the emotional and psychological effect on the victim.

11. This court accepts that no evidence was led in respect of the emotional and/or psychological effect on the victim. However the contents of the document cannot be ignored, it summarizes the harm suffered by the victim which was a direct result of what the accused had done to her (*see State vs. Afzal Khan, criminal case no. HAC 75 of 2016*). The contents of the victim impact statement are credible and reliable and this court has no hesitation in relying on the victim impact statement filed.

**REPRESENTATIVE COUNT**

12. This court is mindful that the accused faces one representative count of rape and one representative count of indecent assault. The evidence before the court was of more than one occasion both the offences were committed on the victim. The accused cannot be punished for the other occasions of rape and indecent assault under the representative counts but for one occasion only (*see Senilokula vs. State, Criminal Petition No. CAV 0017 of 2017, (26 April, 2018)*).
13. The maximum penalty for the offence of rape is life imprisonment the Supreme Court of Fiji in the recent judgment of *Gordon Aitcheson vs. The*

*State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has confirmed that the new tariff for the rape of a juvenile is now a sentence between 11 years to 20 years imprisonment.

14. Section 17 of the Sentencing and Penalties Act states:

*“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.”*

15. I am satisfied that the offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the three offences.

16. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely and there is no two ways about it.

17. Children are entitled to live their lives free from any form of physical or emotional abuse. When children are sexually abused, the offenders should expect condign punishment to mark the society’s outrage and denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.

18. There has been an increase in sexual offences involving offenders who are known to the victim and are matured adults. It is shocking, and appalling to note the manner in which the accused had committed the offences on this child victim.

19. The Supreme Court in *Mohammed Alfaaz v State* [2018] FJSC 17; CAV0009.2018 (30 August 2018) has stated the above in the following words at paragraph 54 that:

*“It is useful to refer to the observation expressed by the Fiji Court of Appeal in Matasavui v State; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118 wherein court said that “No society can afford to tolerate an innermost feeling among the people that offenders of sexual offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity.” The Court of Appeal referred to the same judgment in paragraph 60 of the judgment which is being canvassed before this court having taken into consideration the gravity and cruelty of the case before court and observed that highest possible punishment should be given to the prospective offenders of sexual assault on children who are vulnerable to fall prey to the offenders. I agree with the observations expressed by the Court of Appeal in this regard and would not hesitate to add further that the Court of Appeal had been lenient not to enhance the sentences on the petitioner in view of the aggravating factors in this case”*

20. Madigan J in *State v Mario Tauvoli* HAC 027 of 2011 (18 April, 2011) said:

*“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 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.”*

21. The Supreme Court in *Felix Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015) mentioned a long list of factors that should be considered in punishing the offenders of child rape cases. Those factors would include:

- (a) *whether the crime had been planned, or whether it was incidental or opportunistic;*
- (b) *whether there had been a breach of trust;*
- (c) *whether committed alone;*
- (d) *whether alcohol or drugs had been used to condition the victim;*
- (e) *whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;*
- (f) *whether the impact on the victim had been severe, traumatic, or continuing;*
- (g) *whether actual violence had been inflicted;*
- (h) *whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*
- (i) *whether the method of penetration was dangerous or especially abhorrent;*
- (j) *whether there had been a forced entry to a residence where the victim was pre sent;*
- (k) *whether the incident was sustained over a long period such as several hours;*
- (l) *whether the incident had been especially degrading or humiliating;*
- (m) *If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*
- (n) *Time spent in custody on remand.*
- (o) *Extent of remorse and an evaluation of its genuineness;*
- (p) *If other counts or if serving another sentence, totality of appropriate sentence.*


22. After assessing the objective seriousness of the offences committed I take 13 years imprisonment (lower range of the scale) as the starting point of the aggregate sentence. I add 6 years for the aggravating factors, bringing an



interim total of 19 years imprisonment. The personal circumstances and family background of the accused has little mitigatory value. The accused has an expired or irrelevant previous conviction hence the accused will be treated as a first offender. In this regard I reduce the sentence by 1 year for his mitigation and good character. The sentence now is 18 years imprisonment.

23. I note from court file that the accused was remanded for two months and 15 days. In exercise of my discretion I deduct three months in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final aggregate sentence is 17 years 9 months imprisonment.
24. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the final sentence of imprisonment for one count of rape, one representative count of rape and one representative count of indecent assault is 17 years and 9 months.
25. I am satisfied that the term of 17 years and 9 months imprisonment 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 offence.
26. Mr. Kurinaqau, you have committed serious offences against an unsuspecting and vulnerable child from your own village who you were supposed to protect, care and love. You cannot be forgiven for what you have done to this victim who was 8 years of age at the time. Exposing a child of such a tender age to sexual activities has a negative impact upon a child's development. The accused conduct was unthinkable and deplorable.
27. As a result of the accused person's actions in the victim impact statement the victim stated that she was affected emotionally and psychologically.

28. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was 8 years of age compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which was just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
29. Under section 18 (1) of the Sentencing and Penalties Act, I impose 16 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused which is just in the circumstances of this case.
30. In summary I pass an aggregate sentence of 17 years and 9 months imprisonment with a non-parole period of 16 years to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.
31. 30 days to appeal to the Court of Appeal.



**Sunil Sharma**  
Judge



**At Lautoka**  
26 July, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**