

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

**Criminal Case No.: HAC 200 of 2016**

**STATE**

**V**

**EPI KORAINAMOCE TUIITECI**

**Counsel** : Mr. J. Niudamu for the State.  
: Ms. K. Vulimainadave for the Accused.

**Dates of Hearing** : 12, 13 August, 2019  
**Closing Speeches** : 14 August, 2019  
**Date of Summing Up** : 14 August, 2019  
**Date of Judgment** : 15 August, 2019  
**Date of Sentence** : 29 August, 2019

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**SENTENCE**

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

1. In a judgment delivered on 15<sup>th</sup> August, 2019 this court found the accused guilty and convicted him for one representative count of rape as per the following information:

**COUNT ONE**  
**REPRESENTATIVE COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**EPI KORONAMOCE TUI TECI**, between the 1<sup>st</sup> day of August, 2016 to the 31<sup>st</sup> day of August, 2016 at Sigatoka in the Western Division, inserted his penis into the vagina of “EL” without her consent.

2. The brief facts were as follows:

In August, 2016 the victim who was 16 years of age was alone at home when the accused who was her neighbour came and asked her about the whereabouts of her brother and parents.

3. When the victim told the accused that they were not at home the accused walked into her house and asked her if she had a boyfriend the victim did not reply. At this time the accused came close to her and told her to remove her clothes she refused and told the accused that she will tell her father.
4. The accused told her not to be scared he then forcefully removed the victim's clothes and pushed her on the floor, he made her lie down on the floor and told her not to be afraid. The victim did not like what the accused was doing to her, at this time the accused forced the victim to remove her shorts and panty.
5. The accused also had his pants down, he put on a condom then went on top of the victim and inserted his penis into her vagina, she told the accused that it was painful but the accused said keep still and he will do it slowly.
6. The victim wanted to cry for help, but since her house was far from the village she did not, the accused had forceful sexual intercourse with her for about 5 minutes during this time she felt pain, was feeling weak and had a headache.
7. After having sex with the victim the accused stood up, took his clothes and left. The victim felt so weak that she could not stand up, she did not tell anyone about what the accused had done to her.

8. Also, on another occasion during the same month the accused came into the complainant's house and asked for some tobacco. After the victim found some she gave it to the accused. The accused smoked the tobacco in the verandah of her house after a while he came inside the house. He moved close to her and pushed her on the floor and then forced her to remove her shorts and panty.
9. As the victim was about to scream the accused threatened her that if she screams he will do something to her, this made the victim scared and embarrassed the accused forcefully inserted his penis into her vagina and had forceful sexual intercourse with her for about 5 minutes. On this occasion the accused did not wear a condom after the accused had finished, he took his clothes and left. She did not tell anyone since she was afraid her father would harm the accused if he came to know about what the accused had done to her. The victim did not consent to have sexual intercourse with the accused on any occasion.
10. When the victim got pregnant she told her aunt about what the accused had done to her. The matter was reported to the police and an investigation was carried out whereby the accused was arrested and charged.
11. Both counsel filed their written sentence, victim impact statement and mitigation submissions for which this court is grateful.
12. Counsel for the accused presented the following personal details and mitigation on behalf of the accused:
  - a) The accused was 18 years of age at the time of the offending;
  - b) He is a first offender and is now 21 years of age;
  - c) Was a student of Fiji National University doing Trade Electrical Engineering;
  - d) Third eldest in the family brought up by a single parent;
  - e) Seeks the court's leniency.

13. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v The State, CAV 0003 of 2014* (20 August, 2014) that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

#### **AGGRAVATING FACTORS**

14. The aggravating factors are as follows:

a) Breach of Trust

The victim and the accused were from the same village and were neighbours. The victim was at her home this is the place where she is supposed to be secured the accused knew the complainant was alone, vulnerable and unsuspecting and he took advantage of this. The accused breached the trust of the victim by what he did to her. The victim became pregnant as a result of what the accused did.

b) Victim Impact Statement

According to the victim impact statement the victim lost concentration in school, was embarrassed to the extent that she would hide herself from everyone. She became the talk of the community after the incident, most of the time she would have flashbacks of what the accused had done to her.

This court accepts that no expert evidence was led in respect of the emotional and/or psychological effect on the victim. However the contents of the victim impact statement cannot be ignored in light of the evidence given by the complainant. The harm caused to the victim was a direct result of what the accused had done to her (*see State vs. Afzal Khan, criminal case no. HAC 75 of 2016*).

#### **REPRESENTATIVE COUNT**

15. This court is mindful that the accused faces one representative count of rape. The evidence before the court was of two occasions of rape the accused cannot be punished for the other occasion of rape under the

representative count but for one occasion only (see *Senilokula vs. State, Criminal Petition No. CAV 0017 of 2017, (26 April, 2018)*).

16. 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.
17. It is the duty of the court to protect children from sexual abuse or exploitation of any kind that is the reason why the law has imposed life imprisonment as the maximum penalty.
18. There has been an increase in sexual offences involving offenders who are known to the victim.
19. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely. Children are entitled to live their lives free from any form of physical or emotional abuse. When an accused sexually abuses a child, they should expect condign punishment to mark the society's outrage and denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.
20. 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 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.”*

21. 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.”*

22. 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 present;*
- (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.*

23. After assessing the objective seriousness of the offence committed I take 12 years imprisonment (lower range of the scale) as the starting point of the sentence. I add 4 years for the aggravating factors arriving at an interim total of 16 years imprisonment. The personal circumstances and family background of the accused has little mitigatory value, however, his good character being a first offender has substantive mitigating value. The sentence is reduced by 1 year to reflect good character and mitigation. The sentence now is 15 years imprisonment.
24. I note from the court file the accused was remanded for 2 weeks. In exercise of my discretion I reduce the sentence by 1 month in accordance with section 24 of the Sentencing and Penalties Act as a period of imprisonment already served. The final sentence is 14 years 11 months imprisonment.
25. Mr. Tuiteci, you have committed a serious offence against your neighbour, who was alone, unsuspecting and vulnerable. You cannot be forgiven for what you have done to this victim. Exposing a child to sexual activities at a time when they are in transition to maturity has a negative impact upon a

child's development. Your conduct on the victim is unthinkable and deplorable a long term imprisonment is the only answer.

26. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim of 16 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.
27. Under section 18 (1) of the Sentencing and Penalties Act, I impose 11 years imprisonment 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 and to meet community expectations which is just in the circumstances of this case.
28. In summary I pass a sentence of 14 years 11 months imprisonment with a non-parole period of 11 years to be served before the accused is eligible for parole.
29. 30 days to appeal to the Court of Appeal.



*Sunil Sharma*  
**Sunil Sharma**  
**Judge**

**At Lautoka**  
29 August, 2019

**Solicitors**

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