

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

**CRIMINAL CASE NO. HAC 02 OF 2019**

**BETWEEN** : STATE  
**AND** : SAINIVALATI SOVUI

***Counsel*** : ***Mr. Rakaria I. for the State***  
: ***Ms. Tailoma M. for the Accused***

***Pleaded on*** : ***30<sup>th</sup> September 2019***  
***Hearing on*** : ***01<sup>st</sup> October 2019***  
***Sentence*** : ***04<sup>th</sup> October 2019***

## **SENTENCE**

1. Mr. Sainivalati Sovui, you were charged as follows;

*Statement of Offence*

*RAPE: Contrary to section 207(1) and (2) (a) of the Crimes Act of 2009.*

*Particulars of Offence*

*Sainivalati Sovui, between the 01<sup>st</sup> day of May, 2018 and the 11<sup>th</sup> day of October 2018, at Savudrodro Village, in the Northern Division, penetrated the vagina of Ciba Naidivasulevu, with his penis without her consent.*

2. Sainivalati Sovui, you have freely and voluntarily pleaded guilty to the above count of Rape before the commencement of the trial on 30<sup>th</sup> of September 2019. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.
3. Thereafter, on the 01<sup>st</sup> of October 2019, the State filed the Summary of Facts and the said Summary of Facts were read over and explained to you. You having understood,

agreed and accepted the said summary of facts to be true and correct and have taken full responsibility for your actions.

4. The Summary of Facts filed by the State discloses that:

**BRIEF BACKGROUND**

The Accused in this matter is Sainivalati Sovui of Savudrodro Village, 46 years old, Savusavu, Farmer. The Accused was married with four children. The Accused's late wife passed away sometimes in August, 2017. The complainant in this matter is Ciba Naidivasulevu, student, 17 years old at the time of the alleged offence. She is the biological daughter of the Accused. The Accused was the sole bread winner of his family.

**OFFENCE**

That between the 1st day of May 2018 and the 11th day of October, 2018 at Savudrodro Village the Accused forcefully had sexual intercourse with the complainant more than one time without her consent. That sometimes in the month of May 2018 at Savudrodro, after the complainant put her three brothers to sleep she went into her room to sleep. Whilst the complainant was sleeping she was awoken by a loud sound from the door of her room which was securely locked from inside. The Accused entered her room; at this point the Accused who was intoxicated with alcohol then grabbed the complainant, turned her over facing upwards, removed her panties, spread her legs apart and forcefully inserted his erected penis into the vagina. The complainant tried hitting the floor and wall to alert her three brothers but was unsuccessful as they were sleeping. The Accused continuously pushed his erected penis until he ejaculated inside her vagina. The Accused threaten the complainant that if she tells anyone, nobody will look after her and the siblings and he will be taken to prison. That on the 6<sup>th</sup> day of December, 2018 the complainant went with her brothers to attend a wedding in Suva. Whilst in Suva, she was asked by her uncle namely Nacanieli Saumi to go with her Aunty to the hospital to be checked by the Doctors since he saw something wrong with the complainant. In the hospital she underwent a scan whereby it was confirmed that she was 7 months pregnant. The complainant confirmed that the father of the child is the Accused.

**CAUTION INTERVIEW AND THE CHARGE**

The Accused was interviewed under Caution on the 2nd of January, 2019 and he had admitted to the unlawful acts [Q & A 27-38, 40-47, 49-50, 53-55, 57, 59, 61, 63, 64].

He was then charged on the 2<sup>nd</sup> of January, 2019.

In light of the above, the accused has pleaded guilty on the 30<sup>th</sup> day of September, 2019 on his own free will to Count 1 [Representative Count] to the offence of Rape contrary to section 207 (1) and (2) (a) of the Crimes Act, 2009 that between the 1<sup>st</sup> day of May 2018 and the 11<sup>th</sup> day of October, 2018 at Savudrodoro Village, in the Northern Division, penetrated the vagina of Ciba Naidivasulevu, with his penis, without her consent.

5. I find that the summary of facts supports all elements of the charge in the Information, and find the charge proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you of the count of Rape contrary to section 207 (1) and (2) (a) of the Crimes Act 2009, as charged.

6. The maximum sentence for the offence of Rape contrary to section 207 (1) of the Crimes Act 2009 is an imprisonment for life.

The tariff for the offence of Rape of a Juvenile is an imprisonment term between 11 to 20 years. [**Aitcheson v State**, [2018] FJSC 29; CAV 0012.2018; (02 November 2018)]

7. As for the material before me, the only aggravating factor that could be considered to enhance the sentence would be the breach of trust. The accused is the biological father of the victim. In addition the accused has 14 previous convictions inclusive of a conviction for defilement in 1994. The three of the previous convictions are within the period of 10 years from the date of this alleged offence.

8. The mitigation factors are that the accused is a widower since August 2017, looking after & bringing up the 4 children inclusive of the complainant alone and in addition he has pleaded guilty before the commencement of the trial showing his remorse.

9. In adopting the guidelines provided by **Aitcheson v State** (Supra) and **Koroivuki v State** [2013] FJCA 15; AAU0018.2010 (5 March 2013) I select the 11 years of imprisonment as the starting point of your sentence.

10. In consideration of the aggravating factor set out above I enhance your sentence by further 5 years and now your sentence stands at 16 years of imprisonment.

11. In consideration of the factors set out in mitigation inclusive of your guilty plea, I will deduct 4 years and your final sentence would be 12 years of imprisonment. In consideration of all the material and circumstances of this case, I set the non-parole period at 9 years, after which you will be entitled to be considered for parole.
12. You have been in remand since 02<sup>nd</sup> of January 2019 to this date. That would be 270 days. The said period should be considered as already served and deducted. Therefore I will deduct 09 months and the remainder you'll have to serve would be 11 years and 03 months. Accordingly, you will be eligible for consideration of parole after 08 years and 03 months.
13. You will have thirty (30) days to appeal to the Court of Appeal, if you so desire.

