

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 066 OF 2020S**

**STATE**

**vs**

**MOALA BATI**

**Counsels** : Mr. S. Komaibaba, Mr. Y. Prasad and Ms. M. Lomaloma for State  
Ms. S. Daunivesi and Ms. O. Grace for Accused

**Hearings** : 30 November, 1, 2, 3, 4, 7 and 8 December, 2020.

**Summing Up** : 10 December, 2020.

**Judgment** : 10 December, 2020.

**Sentence** : 11 December, 2020.

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**SENTENCE**

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1. In a judgment delivered yesterday, the court found you guilty and convicted you on the following counts in the following information:

***“Count 1***

***Statement of Offence***

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

***Particulars of Offence***

***MOALA BATI, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the anus of RGM, a child under the age of 13 years, with his penis.***

**Count 2**

**Statement of Offence**

**ATTEMPTED RAPE: Contrary to Section 208 of Crimes Act 2009.**

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of RGM, a child under the age of 13 years, with his penis.**

**Count 3**

**Statement of Offence**

**ATTEMPTED RAPE: Contrary to Section 208 of Crimes Act 2009.**

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of RGM, a child under the age of 13 years, with his penis.**

**Count 4**

**Statement of Offence**

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

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the anus of RGM, a child under the age of 13 years, with his penis.**

**Count 5**

**Statement of Offence**

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

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the anus of RGM, a child under the age of 13 years, with his penis.**

**Count 6**

**Statement of Offence**

**ATTEMPTED RAPE: Contrary to Section 208 of Crimes Act 2009.**

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of RGM, a child under the age of 13 years, with his penis.**

**Count 7**

**Statement of Offence**

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

**Particulars of Offence**

**MOALA BATI, between the 31<sup>st</sup> day of January, 2019 and the 31<sup>st</sup> day of January, 2020 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the anus of EGV, a child under the age of 13 years, with his penis.**

**Count 8**

**Statement of Offence**

**ATTEMPTED RAPE: Contrary to Section 208 of Crimes Act 2009.**

**Particulars of Offence**

**MOALA BATI, between the 31<sup>st</sup> day of January, 2019 and the 31<sup>st</sup> day of January, 2020 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of EGV, a child under the age of 13 years, with his penis.**

**Count 10**

**Statement of Offence**

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

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of October, 2019 and the 31<sup>st</sup> day of October, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the vulva of SD, a child under the age of 13 years, with his tongue.**

**Count 11**

**Statement of Offence**

**ATTEMPTED RAPE: Contrary to Section 208 of Crimes Act 2009.**

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of October, 2019 and the 31<sup>st</sup> day of October, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of SD, a child under the age of 13 years, with his penis.**

**Count 12**

**Statement of Offence**

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

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of October, 2019 and the 31<sup>st</sup> day of October, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the vulva of SD, a child under the age of 13 years, with his penis.**

**Count 13**

**Statement of Offence**

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

**Particulars of Offence**

**MOALA BATI, between the 1<sup>st</sup> day of October, 2019 and the 31<sup>st</sup> day of October, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division,**

***unlawfully and indecently assaulted one SD, a child under the age of 13 years, by rubbing his penis between her thighs.”***

2. The brief facts of the case were as follows. Between 31 January 2019 and 31 January 2020, you were 35 years old. The first complainant (PW4) was 9 years old at the time; the second complainant (PW1) was 8 years old and the third complainant (PW3) was 10 years old. All the child female complainants were related to you. In fact, you were their uncle. You and the complainants' residences were next to each other in the village settlement, and they often come to your house to play with your two young daughters, every now and then. You were well known to them, and prior to the incidents, the three complainants trusted you.
3. It was behind that background of family trust and familiarity that you began to exploit their vulnerability and childhood naivety. You began to systemically prey on them sexually, without the knowledge of their parents and relatives, in the settlement. On six separate occasions, between 1 to 31 August 2019, you secretly enticed the first complainant (PW4) to you cassava plantation in the bush. Your modus operandi was similar on all occasions. You would tell the first complainant (PW4) to lie on a sack you had previously spread on the ground. You would tell her to lie facing down. You would take off her clothes and then your clothes. You would then lubricate your penis and the top of her anus with your saliva. Then you would attempt to penetrate her anus with your penis. On three occasions, you slightly penetrated her anus with your penis (count nos. 1 to 6).
4. For the second complainant (PW1), she came to your house to play with your young daughters, sometimes between 31 January 2019 and 31 January 2020. You knew your daughters were not in your house, but you nevertheless called PW1 into your house. Once she was in your house, you closed the door and forcefully carried her in your arms to your bedroom. You then laid her on a mattress, which was on the floor. She was lying face down. You then undressed her and took off your trousers. You then lubricated your penis and the top of her anus with your saliva, and then attempted to penetrate her anus with

your penis. Thereafter, you slightly penetrated her anus with your penis (count nos. 7 and 8)

5. As for the third complainant (PW3), between 1 and 31 October 2019, you abused her sexually on four separate occasions. The first was when she was returning a coconut scrapper to your house. When she entered your house, you forcefully carried her to your bedroom, laid her on a mattress, and licked her vulva. As a result, your tongue penetrated her vulva, thereby committing rape (count no. 10). On another occasion, while picking mangoes in the bush, you tried to insert your erect penis into her anus, thereby committing the offence of attempted rape (count no. 11). On the third occasion, while catching crabs near the sea shore, you took her to a secluded spot, undressed her, and inserted your penis into her vulva (count no. 12). Lastly while sleeping at you house, on one occasion, with your daughters, you secretly went to her, laid over her, poured oil on her thighs and rubbed your erect penis on the same, until you ejaculated (count no. 13). You had been tried and convicted in the High Court on all the above offences.
6. The offence of rape carried a maximum sentence of life imprisonment (see Section 207 (1) of the Crimes Act 2009). Parliament therefore views the offence as a serious one. It violates the dignity of a person. It is an unwarranted intrusion into the privacy of a person. It is an ultimate act of showing utter disrespect to a person. Therefore those who commit this offence, must expect a lengthy prison sentence to restore the balance, the harmony and atonement to the victim. For the rape of child, that is, anyone less than 18 years old, the tariff is a sentence between 11 and 20 years imprisonment. I refer to the authority of **Gordon Aitcheson v The State**, Criminal Petition CAV 012 of 2018, Supreme Court of Fiji. Of course, the final sentence will depend on the mitigating and aggravating factors.
7. “Attempted Rape”, contrary to section 208 of the Crimes Act 2009, carried a maximum sentence of 10 years imprisonment.

8. "Sexual assault", contrary to section 210 (1) (a) of the Crimes Act 2009, carried a maximum sentence of 10 years imprisonment.
  
9. The aggravating factors, in this case, were as follows:
  - (i) **Serious Breach of an Uncle's Trust.** You were 35 years old at the time. The three female child complainants were 10 years, 9 years and 8 years old at the time. You were related to all of them by blood. You were their uncle. Their residences were next to yours in the village settlement. Prior to the incident, all three child complainants held you in high regards and trusted you. They often came to your house to play with your two young daughters. You were supposed to look after them, care for them and counsel them to become confident and useful citizens of Fiji in the future. However, unbeknown to their parents and village elders, you were abusing their trust by attempting to rape them, raping them and sexually assaulting one of them, on twelve separate occasions. This type of offending is becoming prevalent in our village communities, and the time has come for the courts to take a tough approach to provide a deterrence to would-be offenders.
  - (i) **Rape of Children.** Unfortunately, this problem is becoming prevalent in our society, despite the heavy prison sentence passed by the courts for the rape of children. The court had said in the past, and will keep on saying that it will not tolerate the abuse of children in our society. As it had done in the past, and is now doing and will continue to do, it will pass heavy prison sentences for the rape of children, as a warning to others.
  - (ii) By offending against the three child complainants, you had no regards to their rights as children, no regards to their rights as human beings and no regards to their rights to live a happy and peaceful life.
  - (iii) You have caused untold miseries to the three complainants' families.

10. The mitigating factors were as follows:
- (i) At the age of 37, you had not offended in the last 10 years;
  - (ii) You had been remanded in custody, awaiting trial, for 10 months 10 days.

11. Section 4 (1) of the Sentencing and Penalties Act 2009 reads as follows:

***“4. — (1) The only purposes for which sentencing may be imposed by a court are —***

- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;***
- (b) to protect the community from offenders;***
- (c) to deter offenders or other persons from committing offences of the same or similar nature;***
- (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;***
- (e) to signify that the court and the community denounce the commission of such offences; or***
- (f) any combination of these purposes.”***

12. As a judicial officer, I had presided over “rape” trials in the Magistrate Courts from 1994 to 2009, and again in the High Court from 2009 to 2020. At first, “rape” trials were held because of complaints from adult complainants. In recent years, I had witnessed and presided over numerous rape trials involving young children. Sexual attacks on children are in fact an attack on the future and wellbeing of this country. This is because the children are the future of this country. To protect the children of this country, the time has come to impose the maximum sentence available in law, as a deterrence to others. This is especially so in this case as it involved three child complainants below the age of 13 years old.

13. I therefore, given what is said above, and taking into account the aggravating and mitigating factors, impose the following sentence:



- |        |                               |   |                       |
|--------|-------------------------------|---|-----------------------|
| (i)    | Count No. 1 – Rape            | - | life imprisonment     |
| (ii)   | Count No. 2 – Attempted Rape  | - | 6 years imprisonment  |
| (iii)  | Count No. 3 – Attempted Rape  | - | 6 years imprisonment  |
| (iv)   | Count No. 4 – Rape            | - | life imprisonment     |
| (v)    | Count No. 5 – Rape            | - | life imprisonment     |
| (vi)   | Count No. 6 – Attempted Rape  | - | 6 years imprisonment  |
| (vii)  | Count No. 7 – Rape            | - | life imprisonment     |
| (viii) | Count No. 8 – Attempted Rape  | - | 6 years imprisonment  |
| (ix)   | Count No. 10 – Rape           | - | life imprisonment     |
| (x)    | Count No. 11 – Attempted Rape | - | 6 years imprisonment  |
| (xi)   | Count No. 12 – Rape           | - | life imprisonment     |
| (xii)  | Count No. 13 – Sexual Assault | - | 6 years imprisonment. |

14. Because of the totality principle in sentencing, I direct that all the above sentences be made concurrent to each other, making a final sentence of life imprisonment. Taking into account the mitigating and aggravating factors, I fix the non-parole period as 16 years imprisonment.
15. Mr. Moala Bati, for committing 6 rapes, 5 attempted rapes and 1 sexual assault offences against three female child complainants, between 31 January 2019 to 31 January 2020 at Levuka, Ovalau in the Eastern Division, I sentence you to life imprisonment, with a non-parole period of 16 years imprisonment.
16. The names of the three child complainants are permanently suppressed to protect their privacy.
17. In addition to the above, a permanent domestic violence order with standard non-molestation conditions is issued for the safety of the complainants. This order will remain subject to the orders of this court.

18. You have 30 days to appeal to the Court of Appeal.



**Salesi Temo**  
**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecution, Nausori.**  
**Solicitor for the Accused** : **Legal Aid Commission, Nausori.**