

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 322 OF 2018S

STATE
vs
JOSAIA TADULALA

Counsels : **Ms. K. Semisi for State**
Mr. E. Radio for Accused
Hearings : **13, 14 and 15 July, 2020.**
Summing Up : **16 July, 2020.**
Judgment : **16 July, 2020.**
Sentence : **17 July, 2020.**

SENTENCE

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) (b) and (3) of Crimes Act 2009.*

Particulars of Offence

JOSAIA TADULALA between the 16th day of January 2017 and the 21st day of April 2017 at Vanuabalavu in the Eastern Division penetrated the vagina of SB, a child under the age of 13 years, with his tongue.

Count 2

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

Particulars of Offence

JOSAIA TADULALA between the 16th day of January 2017 and the 21st day of April 2017 at Vanuabalavu in the Eastern Division unlawfully and indecently assaulted SB, a child under the age of 13 years, by sucking her breasts and touching her vagina.”

2. The brief facts of the case were as follows. You were 57 years old at the time of the offendings. The child complainant was 10 years 10 months old at the time. You two were related, and your families knew each other. The complainant refers to you as a grandfather. You two resided in the same village in Vanuabalavu, Lau. The complainant was a class 5 student at the local primary school. You were married and had three children, aged 34, 29 and 27 years old. In 2011, you and your wife separated. You lived alone in your tent in the village at the time. You farmed and did construction work to earn a living.

3. However, between 16 January and 21 April 2017, you began to sexually abuse the child complainant. First, on three separate occasions, you enticed the child complainant to your tent, with the promise of biscuits, noodles and money. Naively, the child complainant came to your tent. You then cunningly took off her clothes, lay her on your bed and touched her vagina. On the fourth occasion, you repeated the above. But this time, you squeezed her right breast and sucked the same. Then you went down on her and licked her vagina. While licking her vagina, your tongue penetrated the same. The matter was reported to police. An investigation was carried out. You were later brought before the courts and charged with raping and sexually assaulting the child complainant. You had been tried and convicted by the High Court for the same.

4. 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.
5. "Sexual Assault" carried a maximum sentence of 10 years imprisonment (section 210 (1) of the Crimes Act 2009). The tariff is a sentence between 2 to 8 years imprisonment. **State v Epeli Ratabacaca Laca**, Criminal Case No. HAC 252 of 2011S, High Court, Suva. Like the offence of rape, the final sentence will depend on the aggravating and mitigating factors.
6. In this case, the aggravating factors were as follows:
 - (i) **Serious Breach of Grandparent's Trust.** The female child complainant (PW1), at the time of the incident, was 10 years 10 months old, and trusted you as one of her grandfathers. This was not unusual in a village setting where a child had so many grandfathers, who are part of the extended family. You were related to each other, and resided in the same village. As an elder, you were supposed to look after and care for the young children of the village. You were supposed to ensure their safety while they roam around the village. However, you abused the trust the child complainant had in you. You bribed her to come to your tent with biscuit, noodles and money. Then you did the unthinkable by sexually assaulting and raping her. You must understand that you will have to be punished with a heavy prison sentence.
 - (ii) **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.

(iii) By offending against the complainant, you had no regards to her right as a child, no regard to her rights as a human being, and no regards to her right to live a happy and peaceful life.

7. The mitigating factors were as follows:

(i) At the age of 60, this is your first offence;

(ii) You had been remanded in custody, awaiting trial, for 1 ½ years.

8. On count no. 1 (rape), I start with a sentence of 11 years imprisonment. I add 3 years for the aggravating factors, making a total of 14 years imprisonment. For time already served while remanded in custody, I deduct 1 year 7 months from the total sentence, leaving a balance of 12 years 5 months imprisonment. For being a first offender at the age of 60 years old, I deduct 1 year 5 months, leaving a balance of 11 years imprisonment. On count no. 1 (rape), I sentence you to 11 years imprisonment.

9. On count no. 2 (sexual assault), I sentence you to 3 years imprisonment.

10. The summary of your sentences are as follows:

(i) Count no. 1 (Rape) : 11 years imprisonment.

(ii) Count no. 2 (Sexual Assault) : 3 years imprisonment.

11. Because of the totality principle of sentencing, I direct that the above sentence be made concurrent to each other, that is, a total sentence of 11 years imprisonment.

12. Mr. Josaia Tadulala, for raping and sexually assaulting the child complainant, between 16 January and 21 April 2017, at Vanuabalavu, Lau, in the Eastern Division, I sentence you to 11 years imprisonment, with a non-parole period of 8 years, effective forthwith.

13. The name of the child complainant is permanently suppressed to protect her privacy.
14. In addition to the above, a permanent domestic violence order with standard non-molestation conditions is issued for the safety of the complainant. This order will remain subject to the orders of this court.
15. 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, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**