

**IN THE HIGH COURT OF FIJI AT LABASA**

**CASE NO: HAC. 52 of 2019**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**ALIFERETI LAGOLEVU**

**Counsel** : Mr. I. Rakaria for the State  
Ms. R. Raj with Ms. K. Boseiwaqa for the Accused

**Hearing on** : 21 - 23 September 2020

**Summing up on** : 23 September 2020

**Judgment on** : 24 September 2020

**Sentenced on** : 25 September 2020

[The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "KV". No newspaper report or radio broadcast of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the said complainant.]

**SENTENCE**

1. Alifereti Lagolevu, you stand convicted of the following offences after trial;

**FIRST COUNT**

*Statement of Offence*

**Rape:** contrary to Section 207(1) and (2) (b) of the Crimes Act, 2009.

*Particulars of Offence*

**ALIFERETI LAGOLEVU**, between the 11<sup>th</sup> of August 2018 to the 26<sup>th</sup>

of August 2018 at Navunievu, Bua in the Northern Division penetrated the vagina of **KV**, with his finger, without her consent.

## **SECOND COUNT**

### *Statement of Offence*

**Sexual Assault:** contrary to Section 210 (1) (a) of the Crimes Act, 2009.

### *Particulars of Offence*

**ALIFERETI LAGOLEVU**, between the 01<sup>st</sup> of January, 2018 to the 31<sup>st</sup> day of December 2018 at Navunievu, Bua in the Northern Division, unlawfully and indecently assaulted **KV** by grabbing both her breasts.

2. You are related to the victim as her uncle and also a grandfather. She in fact addresses you as 'Bu' Lago. You were born in 1963 and the victim in 2004. There is an age difference of 41 years. During the August school holidays in 2018, you saw the victim who was 14 years old that time, swimming in the river at Navunievu. She was floating facing upwards. You jumped into the river and pulled the victim towards your groin area from her legs where her legs were parted. You then held one of her legs with one hand and slid your other hand inside her underwear and penetrated her vagina using your fingers. At the time you inserted your hand inside her clothes the victim was trying to surface as she was submerged in water as a result of your pulling her. This manner you conduct the offence where you not only violated her but also made her suffocate was appalling.
3. On another occasion in 2018, you went to the victim's house while she was frying pancakes in the kitchen and you then grabbed her breasts from behind. Thereafter you made her lie down, got on top of her and touched her genitalia. Thus, you sexually assaulted the victim at her own house where you had access to that house given the position of trust you held being a close relative of the victim's family. The manner you committed this offence where you grabbed the victim's breast and then got on top of her after making her lie down in her own kitchen where another child, the victim's sister also had to witness your act was outrageous.

4. At the time you committed the two offences, you were 55 years old. It is submitted that you are not married and that you live with your elder brother. You were engaged in farming.
5. Pursuant to section 207(1) of the Crimes Act 2009 (“Crimes Act”) read with section 3(4) of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), the maximum punishment for rape is life imprisonment.
6. The sentencing tariff for rape of a child victim above the age of 13 years is a term of imprisonment between 10 to 16 years. [see *Anand Abhay Raj v State* [2014] FJSC 12); *State v Tubunavau* [2019] FJHC 950; HAC346.2018 (30 September 2019); *Kumar v State* [2018] FJSC 30; CAV0017.2018 (2 November 2018); *Aitcheson v State* [[2018] FJSC 29; CAV0012.2018 (2 November 2018); *Prasad v State* [2019] FJSC 3; CAV0024.2018 (25 April 2019)]
7. The offence of sexual assault under section 210(1) of the Crimes Act carries a maximum sentence of 10 years imprisonment. The sentencing tariff for this offence is an imprisonment term between 02 to 08 years [*State v Laca* [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012)].
8. The offences you are convicted of forms a series of offences of similar character. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for the two offences you are convicted of.
9. In the case of *Subramani v State* [2018] FJCA 82; AAU0112.2014 (1 June 2018) the Court of Appeal observed thus;

*[15] The offence of rape of young person related to the appellant is a serious offence. In this case the complainant was 11 years old and the appellant was her grand uncle (her grandfather's brother). The authorities indicate that whilst*

*rehabilitation is a factor to be considered when fixing a non-parole period, so also are deterrence, denunciation, condign punishment and community protection and expectations. The appropriate person to balance these objectives in each case is the sentencing judge. In the present case, given the age of the appellant, re-habilitation is not a particularly relevant matter whereas the expectations of the community and the protection of young girls should be reflected in both the head sentence and the non-parole term so as to send a strong signal that the courts will impose appropriate sentences in such cases.*

10. In the case of *State v. AV* [2009] FJHC 24; HAC 192 of 2008 (2 February 2009)

Goundar J said thus;

*. . . Rape is the most serious form of sexual assault. In this case a child was raped. Society cannot condone any form of sexual assaults on children. Children are our future. The Courts have a positive obligation under the Constitution to protect the vulnerable from any form of violence or sexual abuse. Sexual offenders must be deterred from committing this kind of offences.*

11. In the case of *State v Fusi* [2018] FJHC 1215; HAC223.2017 (18 December 2018)

Rajasinghe J in sentencing the accused who had carnal knowledge of a 5 year old child, noted thus;

*In view of the serious nature and the prevalence of the crimes of this nature, the main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the court to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature. A harsh and long custodial sentence is inevitable for the offences of this nature in order to demonstrate the gravity of the offence and also reflect that the civilized society denounce such crimes without any reservation.*

12. Given the number of cases brought before the courts in Fiji and the sentiments expressed in cases it is clear that sexual exploitation of children is rife. There is no conclusive evidence however, on whether the increase noted in the number of such cases filed during the past few years is a result of an increase in the awareness among the community and access to justice or whether in fact the number of offences committed are on the increase. Whichever is the case, protecting Fiji's children from sexual predators has become a priority.

13. Therefore, when sentencing offenders who had sexually exploited children, a sentencing court should be mindful of the need to protect the community from offenders, to deter the offenders and other persons with similar impulses from committing like offences and to signify that the court and the community denounce the sexual exploitation of children, but always bearing in mind to punish the offender to an extent and in a manner which is just in all the circumstances (vide section 4(1) of the Sentencing and Penalties Act). The punishment or the sentence should be proportionate to the seriousness of the offending.
14. I consider the following as the aggravating factors in this case;
- a) Given that you are related to the victim as her grandfather where she even addresses you as Bu Lago, there is a serious breach of trust;
  - b) The age gap between you and the victim which is 41 years;
  - c) The manner you have conducted the two offences as noted in paragraphs 2 and 3 above and especially making the victim suffocate when you penetrate her vagina; and
  - d) The fact that you have exploited the victim's vulnerability and naivety.
15. At the moment you are a serving prisoner. You have been convicted of the offence of indecent assault on 06/02/20 in Case No. CF102/17 and sentenced in relation to the said offence on 27/02/20 to a term of 30 months imprisonment. The prosecutor or the defence counsel was unable to inform this court the date you have committed that offence. Nevertheless, given the case number, as you have been produced before the court for that offence in 2017, it is clear that you have committed the two offences relevant to this case after you were charged in the said case, CF 102/17. Given these circumstances you are not a first offender as far as this case is concerned. Hence there are no mitigating circumstances in your favour.

16. Considering the two offences you have committed, I would select 11 years as the starting point of your aggregate sentence.
17. In view of the above aggravating factors I would add 04 years to your sentence. There is no further adjustment to be made as there are no mitigating factors. Accordingly, I sentence you to a term of 15 years imprisonment. This is your aggregate term of imprisonment for the two offences you are convicted of.
18. In his sentencing remarks in Case No. CF 102/17, the Learned Magistrate says thus;  
*You indecently assaulted a child victim – ‘A.M’ who was below the age of 13 years old at the time of offending. The child victim was asleep and you entered the family house of the child victim and then you indecently assaulted by pulling her trousers down and touched the child victim’s vagina. A child witness – ‘A.T’ saw what you did to the child victim – ‘A.M’. You fled from the scene.*
19. Thus, in 2017 you have entered the house of a child victim below the age of 13 years and had touched the child’s vagina, in 2018 you jumped into the river the 14-year-old victim in this case was swimming and had penetrated her vagina and then the same year you entered the same victim’s house and sexually assaulted her by grabbing her breasts and then touched her vagina while being on top of her. These circumstances clearly point out that you pose a threat to young girls you come across and highlight the need to remove you from the society for a substantial period of time.
20. Further, it is pertinent to note that the two offences in relation to this case appear to have been committed whilst you were on bail in relation to Case No. CF 102/17. I have considered the provisions of section 22 of the Sentencing and Penalties Act. Given that you appear to have committed the offences in relation to the current case while you were on bail for another matter, the default position that a sentence imposed while a person is already serving a sentence

should be served concurrently with such uncompleted sentence, does not apply in terms of section 22(2)(e) of the Sentencing and Penalties Act. That is, the sentence imposed in this case should in fact be served consecutively on the uncompleted sentence, in view the said provisions.

21. Nevertheless, considering the totality of the offending including the offence you have committed relevant to the case, CF 102/17 and also your age, in my judgment, the ends of justice would be served by ordering the 15 years sentence imposed in this case to run concurrently with the uncompleted sentence you are currently serving in view of Case No. CF 102/17. I would order accordingly.
22. I order that you are not eligible to be released on parole until you serve 14 years of your sentence pursuant to the provisions of section 18(1) of the Sentencing and Penalties Act. In view of the provisions of section 20(1) of the Sentencing and Penalties Act, the non-parole period fixed in CF 102/17 should now be disregarded and your single non-parole period would be 14 years which is effective from today.
23. It is submitted that you were in custody in relation to this matter from 07/11/19. However, you were serving the sentence imposed on you in CF 102/17 from 27/02/2020. In view of the provisions of section 5(3) of the Bail Act 2002 which provides that 'a person is not entitled to be granted bail if the person is in custody serving a sentence of imprisonment in connection with some other offence', the period from 27/02/20 until now cannot be considered as time spent in remand. Accordingly the time you have spent in remand in view of this case is 03 months and 20 days. It is not clear from the sentencing remarks in CF 102/17 whether the 32 days considered in that case as time spent in remand overlaps with the aforementioned period you were in custody in view of this matter. However, you would be given the benefit of the doubt and

the said total period will be considered as time already served in terms of section 24 of the Sentencing and Penalties Act.


24. In the result, you are sentenced to an imprisonment term of 15 years with a non-parole period of 14 years. In view of the time spent in custody, time remaining to be served is as follows;

Head Sentence - 14 years; 08 months and 10 days

Non-parole period - 13 years; 08 months and 10 days

25. The sentence imposed in this case should be served concurrently with the uncompleted sentence of imprisonment you are currently serving. Your single non-parole term in respect of all sentences you are to serve with effect from today would be the non-parole term fixed in this case.
26. Having considered the facts of this case, a permanent Domestic Violence Restraining Order is issued against you, identifying the victim in this case 'KV' as the protected person. You are hereby ordered not to have any form of contact with the said victim directly or by any other means, unless otherwise directed by this Court.
27. Thirty (30) days to appeal to the Court of Appeal.



  
Vinsent S. Perera  
JUDGE

**Solicitors;**

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