

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

**CRIMINAL CASE NO. 011 OF 2020**

**BETWEEN** : STATE

**AND** : OM KRISHNA NAICKER

**Counsel** : Ms S Sharma for the State  
Mr K Prasad for the Accused

**Date of Hearing** : 12 October – 14 October 2020

**Date of Summing Up:** 15 October 2020

**Date of Judgment** : 15 October 2020

**Date of Sentence** : 22 October 2020

**SENTENCE**

- [1] The offender was a friend of the victim’s father. He came to stay with the victim’s family as a co-tenant at Vatuwaqa, Suva when he was in need of an accommodation. The offender is originally from Labasa. Very little is known about his own family. He is 32 years old and single. When he came to Suva from Labasa he worked as a labourer and earned about \$150.00 per week to support himself.
- [2] At the time of the offending, the victim was 3 years old. The incident occurred on 2 April 2019. On the day of the incident the victim was under the care of a babysitter who lived next door to the victim. When the offender returned home from work that evening, the child was left alone with the offender while her mother was still at work. While the victim was under the care of the offender he touched her naked vulva and anus. The

- victim told the court that the offender used his index finger to touch the inside of her genitals and anus.
- [3] A neighbour who heard the victim's distress call went to the scene and saw the offender's hand on the victim's thighs over her tights. When the victim's mother returned home that evening she found the victim was distressed and the victim told her that the offender had done something to her.
- [4] The offender was found guilty of digital rape on two counts involving penetration of the victim's vulva and anus.
- [5] Children are being sexually abused in our community at an alarming rate. What is more appalling is that more children are being abused in their homes by people they trust. The principle purposes of punishment applicable in this case are denunciation and deterrence.
- [6] In this case the victim was very vulnerable due to her tender age. The age gap between her and the offender was vast. The child was abused in her home, a place where she should have been safe. She was abused by a person who she knew. Hence, there is an element of breach of trust. These are the aggravating factors.
- [7] The only mitigating factor is the offender's previous good character. Otherwise, he has expressed little remorse for his actions. His pre-sentence remand period is 10 days.
- [8] I have considered the maximum penalty for rape and the applicable tariff for child rape set out in *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018).
- [9] In the present case, there is no evidence that the offender's conduct caused any physical injury to the victim's private parts. The only cogent explanation for the lack of physical injuries to the victim's private parts is that the penetration was fleeting. The offender seized the chance to inappropriately touch the victim's private parts when she was left alone with him. The conduct of the offender involved little or no premeditation. The two acts of penetration are part of one transaction. For these reasons, I pitch the overall criminality of the offender at the lower end of the tariff.

[10] After taking all these matters into account, the offender is sentenced to an aggregate term of 12 years' imprisonment for two counts of digital rape with a non-parole period of 9 years to serve.



A handwritten signature in black ink, appearing to read "D. Goundar".

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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

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