

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

**CRIMINAL CASE NO. 213 OF 2020**

**BETWEEN** : **STATE**

**AND** : **TAITUSI TUIVUCILEVU**

**Counsel** : Ms S Sharma for the State  
Mr J Korotini for the Accused

**Date of Hearing** : **20 October 2020**

**Date of Sentence** : **26 October 2020**

**SENTENCE**

[1] The offender has pleaded guilty to three counts of digital rape involving his two granddaughters and a neighbour. Two victims are 6 years old while one is 7 years old. The offender is 83 years old. The incidents occurred at Lovu village, Gau in May and June 2020.

[2] The facts tendered and admitted by the offender are as follows.

On Saturday 30<sup>th</sup> May 2020 at Lovu village, Gau, the first complainant (granddaughter) went with her brother namely N aged 4 years old to play with her friends near a shop, whilst playing the children then decided to go and pick guavas near the accused's house. Whilst the complainant and the other children were there, the Accused called the complainant into the house and asked her to fill his bottle with water as he was thirsty. Upon filling the water bottle the complainant gave the bottle to the Accused.

The Accused then told the complainant that she was pretty and kissed her, after that the accused told the complainant to lie down on the floor so that no one would see them. The accused told the complainant to take off her clothes and moved towards her on the floor and began to penetrate the vulva of the complainant for some time with his tongue, after that the accused told the complainant to put on her clothes again and she returned to her friends near the guava tree.

Two days later on Monday 1<sup>st</sup> June 2020 sometimes in the afternoon at Lovu village, Gau, the second complainant (granddaughter) went with the third complainant (neighbour) to the beach to play for a while before returning home. Afterwards, both complainants decided to go and visit the accused at his house. Upon arriving at the accused's home they noticed him lying on the sitting room floor (the accused had suffered from stroke earlier and could not walk). The accused told them to go and clean up his bedroom then when they were done to close the door and wait for him inside.

The accused then moved himself from the sitting room to the bedroom and upon entering the bedroom told the second complainant to take off her clothes and lie on the bed, after the second complainant did this the accused moved towards her and penetrated her vulva with his tongue while the third complainant watched. The accused then told the second complainant to put on her clothes and move away from the bed so that the third complainant could move closer to him and lie on the bed. Once the third complainant had laid down on the bed the accused moved her legs apart and penetrated her vulva with his tongue while the second complainant watched, after some time the accused then told her to put on her clothes.

The accused was interviewed under caution at Qarani Police Station on 11<sup>th</sup> June 2020. Upon having the allegations put to him, the accused made full admissions.

[3] In mitigation, counsel for the offender highlighted that the offender was a widower and a first time offender at the age of 83 years. He has been immobile for the last thirteen

years after suffering stroke. Apart from stroke he does not have any other medical conditions. He may face some difficulty in prison due to his immobility.

- [4] I consider the following as mitigating factors. The offender has taken responsibility for his crimes by entering early guilty pleas consistent with his admissions to police. He has spared the victims the trauma of giving evidence and saved court's time and resources. He is remorseful. For these factors I allow a discount of three years. I further allow a discount of one year for his previous good character. However, I do not think that his advanced age and medical condition mitigate the crimes he had committed. His advanced age or his medical condition was not a barrier for him when he committed the offences.
- [5] I consider the following as aggravating factors. The charges involve three victims. All three victims were vulnerable due to their young age and the age gap between them and the offender. The offender breached the victims' trust by sexually abusing them. The second and the third complainants were made to watch each other when the offender committed the sexual acts on them.
- [6] The offender being an elderly grandfather had a moral duty towards the victims to protect them from any form of abuse. Instead of protecting the victims he made them the desire of his lust. The conduct of the offender is so repulsive that he cannot escape a prison sentence. The main purposes of sentence in this case are denunciation and deterrence.
- [7] I take into account the maximum penalty of life imprisonment for rape and the tariff of 11-20 years imprisonment for child rape endorsed by the Supreme Court in *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018). If it was not for the offender's early guilty pleas and previous good character, his overall criminality would have fallen at the upper end of the tariff. The offender's mitigating factors have reduced his criminality to the middle range of the tariff.
- [8] A downward adjustment is made to the offender's remand period of 1 month 18 days.

- [9] After taking all these matters into account, the offender is convicted and sentenced to an aggregate term of 16 years' imprisonment with a non-parole period of 12 years for the three counts of rape.
- [10] The offender shall be subject of a permanent DVRO with standard no contact and non-molestation conditions in respect to all three victims for the rest of his life.



A handwritten signature in blue ink, appearing to read "Daniel Goundar", written over a dotted line.

**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

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