

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No: HAC 72 of 2020

BETWEEN : THE STATE

AND : TUSIGA LOLOIVEI

Counsel: Ms J Fatiaki for the State
Ms M Tuiloma for the Accused

Date of Hearing: 17 November 2020

Date of Sentence: 18 November 2020

SENTENCE

[1] The offender has pleaded guilty to rape of his 15-year old biological sister. The facts tendered by the prosecution are as follows:

1. The complainant and the Accused are biological siblings.
2. On the 29th of July 2019 the complainant, her twin sister and the Accused had accompanied their parents to Bulileka village to attend a funeral.
3. The complainant, her twin sister and the Accused decided to go for a swim in a nearby river at around 8am that morning.
4. Whilst at the river they all swam, and sometime after the Accused told the complainant's twin sister to wait for them under the tree whilst he and the complainant went in search of watermelon at a nearby farm.
5. The complainant then accompanied her brother in search of watermelon. When they reached the farm which was about 300 metres from the river, the Accused pulled her by her right hand which caused her to fall to the ground. He then

removed her panty and climbed on top of her. She yelled out loud and he placed his hand on her mouth and pressed down hard.

6. The Accused then inserted his erected penis into the complainant's vagina and had sexual intercourse with her without her consent for about 10 minutes.
7. He ejaculated outside of her vagina.
8. When he had finished the Accused put his clothes back on and warned the complainant that she was not to tell her mother what had happened. At this point in time the Accused had in his possession a kitchen knife.
9. The complainant returned to where her sister was waiting for them by the river. The two of them then returned to the house which they were staying in.
10. The complainant relayed what the Accused had done to her to their mother Karalaini Tuqiri (Senior).
11. The matter was then reported to Police and the complainant was taken for medical examination where the examining doctor noted the following specific medical findings:
 - o *Deep, fresh, hymenal laceration at 6 o'clock position*
 - o *Estrogenised hymen with scalloping*
12. **A copy of the complainant's Medical Examination Form is attached as A1.**
13. The Accused having knowledge that the complainant had reported the matter to police, then fled and was on the run until he was arrested by PC 3452 Josefa Vosaira on the 25th of October 2020 from Sarava, Nakama, Labasa.
14. The Accused was interviewed under caution by police on the same day and upon having the allegations put to him he admitted having sexual intercourse with the complainant without her consent by inserting his penis into her vagina (Q & A 48, 53, 54, 57, 69). **A copy of the Caution Interview of the accused is attached as A2.**

[2] The offender is 34 years old and single. He is a cane cutter by profession. I consider the following as mitigating factors. The offender has entered an early guilty plea consistent with his confession to police. He is remorseful. He has relieved the victim the trauma of giving evidence. He has also saved the court's time and resources. I give him a discount of three years for these factors. I give him a further discount of one year for his previous good character.

- [3] I consider the following as aggravating factors. The offender breached the trust that the victim reposed on him as her brother. The offender had a knife with him when he committed the act. He lured the victim to an isolated spot in the pretext of looking for fruits. The victim sustained physical injuries to her private parts during the non-consensual sexual intercourse.
- [4] The maximum penalty for rape is life imprisonment. The tariff for child rape is from 11-20 years' imprisonment.
- [5] This is a case of incestuous rape of a sister by her own biological brother. The offence amounts to domestic violence. At the relevant time the victim was a child. The offender was a grown up adult male and in a position of authority over the victim due to the vast age gap between them. Instead of protecting his sister, the offender violated her body for his own sexual gratification.
- [6] The crime is so deplorable that the offender cannot escape a prison sentence. The court's duty is to denounce the crime and impose a deterrent sentence.
- [7] A downward adjustment is made to the sentence to reflect the offender's remand period of one month.
- [8] The offender is convicted and sentenced to 12 years' imprisonment with a non-parole period of 8 years.



A handwritten signature in blue ink, appearing to be 'D. Goundar', is written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for State

Office of the Director of Legal Aid Commission for Accused

