

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 36 of 2020

BETWEEN:

STATE

PROSECUTION

AND:

ATILE NAITUINITABUA

ACCUSED PERSON

Counsel:

Ms. S. Swastika for State

Ms. R. Raj for Accused

Date of Hearing: 22 February 2021

Date of Judgment: 23 February 2021

Date of Sentence: 23 February 2021

SENTENCE

1. The Court found Mr Atile Naituinitabua guilty of one count of Rape, contrary to Section 207 (1) and (2) (a) of the Crimes Act, which carries a maximum sentence of life imprisonment. The particulars of the offence are that;

Statement of Offence

RAPE: *Contrary to Section 207 (1) and (2) (a) of the Crimes Act of 2009.*

Particulars of Offence

ATILE NAITUINITABUA, between the 22nd and 23rd day of April, at Labasa in the Northern Division, had carnal knowledge of AKENETA SOGOIVALE, without her consent.

2. It was proved during the hearing that you had forcefully penetrated the vagina of the complainant while she was sleeping in the living room at your home. She is your niece. The complainant was sixteen years old at that time.
3. Rape is one of the most humiliating and distressing invasions of the integrity of the human body. It becomes more serious when it is involved with a young adolescent child victim. Hence, I find that the Rape of this nature is a severe crime. In this case, the complainant was sexually abused by her own uncle. This form of sexual exploitation of children by the known adult is a serious offence.
4. The Supreme Court of Fiji in **Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018)** held that the increasing prevalence of crimes of this nature demands the Courts to consider widening the tariff for the Rape against children. The Supreme Court of Fiji held that:

"The increasing prevalence of these crimes, characterized by disturbing aggravating circumstances, means the Court must consider widening the tariff for Rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent."

Purpose of the Sentence

5. In view of the severe nature and prevalence of crimes of this nature, the main purpose of this sentence is founded on the principle of deterrence. The Court's responsibility is 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 to demonstrate the gravity of the offence and reflect that civilized society denounces such crimes without any reservation.

Tariff

6. Gates CJ in **Aitcheson v State (Supra)** held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period.
7. The victim impact report states that this crime has adversely affected the complainant emotionally and psychologically. Therefore, I find that the level of harm in this offence is significantly high.
8. You had found an opportunity when the complainant was sleeping. None of the female family members was present at home. Using this opportunity, you had unleashed your crime when she was sleeping and not in a position to look for help or a chance of escape. You had told her not to inform anyone about this crime. I accordingly find that the level of culpability is significantly high in this crime.
9. Having considered the seriousness of the crime, the purpose of the sentence, the level of culpability and harm, I select eleven (11) years as the starting point.
10. You have breached the trust that the complainant had in you as an elderly relative. The complainant had considered you like a father figure. The age difference between you and the complainant is substantially high. By committing this crime, you have exposed this sixteen-year-old child to sexual activities at a very young age, thus preventing her from having a natural growth of maturity in her life. I consider these grounds as aggravating factors in this offending.
11. The learned Counsel for the Defence, in her mitigation submissions, submitted your personal and family background, which I do not find any mitigatory value.
12. The learned Counsel for the Defence submitted that you are a first offender; hence, you are entitled to a substantive discount. I find that your previous good character, especially the fact that you have not been tainted with any previous conviction for an offence of sexual nature, would have definitely allowed you to freely move around in the

community without any suspicion of risk. The community has perceived you as a man of good character and not as a child paedophile and allowed you to be freely moved in the community. Accordingly, I do not find your previous good character has any significant mitigatory value. Hence, you are only entitled to a meagre discount for your previous good character.

13. In view of the reasons discussed above, I increase three (3) years for the aggravating factors to reach an interim period of fourteen (14) years. Given your previous good character, I give you a one (1) year discount. Your final sentence is thirteen (13) years imprisonment.
14. Having considered the seriousness of this crime, the purpose of this sentence, your age, and opportunities for rehabilitation, I find eleven (11) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

15. Accordingly, I sentence you to **thirteen (13) years** imprisonment for the count of Rape as charged in the information. Moreover, you are not entitled to any parole for eleven (11) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

16. You have been in remand custody for this case for nearly twenty-eight (28) days before the sentence as the Court did not grant you bail. In pursuant to Section 24 of the Sentencing and Penalties Act, I consider one (1) month as a period of imprisonment that you have already served.
17. Accordingly, the actual sentencing period is **twelve (12) years and eleven (11) months** imprisonment with a non-parole period of **ten (10) years and eleven (11) months**.

18. Thirty (30) days to appeal to the Fiji Court of Appeal.




Hon. Mr. Justice R.D.R.T. Rajasinghe

At Labasa

23 February 2021

Solicitors

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