

IN THE HIGH COURT OF FIJI  
AT LABASA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 51 of 2020

STATE

v

SW

**Counsel:** Ms. A. Vavadakua for the State  
Ms. L. Manulevu with Ms. K. Marama for the Accused

**Date of Hearing:** 12<sup>th</sup> January 2021

**Date of Summing Up:** 13<sup>th</sup> January 2021

**Date of Judgment:** 14<sup>th</sup> January 2021

**Date of Sentence:** 18<sup>th</sup> January 2021

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**SENTENCE**

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1. The name of the Complainant and the Accused are suppressed. Hereinafter the Complainant will be referred to as **MM** and the Accused will be referred to as **SW**.
2. The Court found Mr. SW, guilty of one count of Sexual Assault, contrary to Section 210 (1) of the Crimes Act, which carries a maximum penalty of ten years imprisonment.

3. It was proved at the conclusion of the hearing, that you had fondled the genital area of the Complainant with your fingers. The Complainant was seven years old, and you are the stepfather of the Complainant.
4. Offences of sexual nature are one of the humiliating and distressing crimes. It violates the physical self of a person and destroys the personal dignity and self-autonomy of a person. Therefore, such offences are serious offences. In this case, the stepfather used his seven-year-old stepdaughter as his surrogate sexual partner to satisfy his sexual gratification.
5. The main purpose of this sentence is the principle of deterrence. It is the Court's responsibility to deter offenders or other persons from committing offences of the same or similar nature and protect the community from offenders of this nature.
6. The tariff for the offence of Sexual Assault is 2 to 8 years imprisonment.
7. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, this crime has shattered her self-confidence. Therefore, I find the level of harm in this offence is significantly high.
8. You had meticulously planned and executed this crime when she was alone in the room. You have plotted this crime by using your position in the family as a stepfather. I accordingly find that the level of culpability is significantly high in this crime.
9. The Complainant is your stepdaughter. You had abused the trust and confidence this little child had in you as her stepfather. By doing this crime, you have destroyed the safest place in her young life, that is her family home. The age difference between you and the Complainant is significant. I consider these reasons as aggravating factors of this offence.
10. The learned Counsel for the Defence in her mitigation submissions submitted your personal and family background, which has no mitigatory value.

11. 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 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 pedophile and allowed you to be feely with your female family members. Moreover, there is no suggestion that you have significantly contributed to the community or have any reputation in the community as per Section 5 of the Sentencing and Penalties Act. Therefore, 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.
12. I sentence you for five (05) years imprisonment for this offence in view of the reasons discussed above. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find three (03) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for three (03) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### **Head Sentence**


13. Accordingly, I sentence you for five (05) years imprisonment for the offence of Sexual Assault, contrary to Section 210 (1) of the Crimes Act. Moreover, you are not entitled to any parole for three (03) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### **Actual Period of the Sentence**

14. You have been in remand custody for this case for nearly six (06) months before the sentence as the Court did not grant you bail. In pursuant to Section 24 of the Sentencing and Penalties Act, I consider six (06) months as a period of imprisonment that you have already served.
15. Accordingly, the actual sentencing period is **four (04) years and six (06) months** imprisonment with a non-parole period of **two (02) years and six (06) months**.

16. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a Permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Sections 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competence Court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant of section 77 of the Domestic Violence Act.
17. Thirty (30) days to appeal to the Fiji Court of Appeal.



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

**At Suva**

18<sup>th</sup> January 2021

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.