

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

High Court Criminal Case No. HAC 019 of 2020

BETWEEN : STATE

AND : VAKANANUMI VUNIVESI

Counsel : Ms W. Elo for the State  
Mr. K. Verebalavu and Mr E Veibataki for the Accused

Dates of Hearing : 18 & 19 January 2021

Closing Speeches : 19 January 2021

Date of Summing up: 21 January 2021

Date of Judgment : 22 January 2021

Date of Sentence : 19 February 2021

**(The name of the Complainant is suppressed, and she will be referred to as FN.  
Nothing shall be published that identifies the Complainant.)**

**SENTENCE**

1. You, Vakananumi Vunivesi stand convicted for three counts of rape. The statements of offences and particulars of offences are as follows;

### **First Count**

#### *Statement of Offence*

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

#### *Particulars of Offence*

Vakananumi Vunivesi between the 23<sup>rd</sup> day of November 2017 to the 13<sup>th</sup> day of January 2017 at Vunisei village in the Eastern Division had carnal knowledge of FN without her consent.

### **Second Count**

#### **Representative count**

#### *Statement of Offence*

Rape : Contrary to Section 207 (1) and (2) (a) of the Crimes Act 44 of 2009.

#### *Particulars of Offence*

Vakananumi Vunivesi Between the first day of January 2018 to the 31st day of December 2018 at Vunisei village in the Eastern Division had carnal knowledge of FN without her consent.

### **Third Count**

#### *Statement of Offence*

Rape: Contrary to Section 207 (1) and (2) (a) of the Crimes Act 44 of 2009.

#### *Particulars of Offence*

Vakananumi Vunivesi the 15<sup>th</sup> day of November 2019 at Vunisei village in the Eastern Division had carnal knowledge of FN without her consent.

2. You are the stepfather of the Complainant. The Complainant had been about 15 years of age in 2017 when the incident relating to the first count occurred. The first incident happened during the third term school holidays in the year 2017, when the Complainant's mother was not at home. You forced the Complainant to take off her clothes and you told her siblings to stay outside the house. The Complainant submitted to you as she was scared that you would assault her. You

inserted your penis into her vagina without her consent and the Complainant had to bear the pain as it was hurting.

3. Since then, you continued to rape the Complainant during the year 2018. When the Complainant returned home after school and when her mother was not at home, you had sexual intercourse with the Complainant without her consent in numerous occasions. The Complainant submitted to you due to fear.
4. On a Monday in November 2019, you had sexual intercourse with the Complainant. You told her that you will again have sexual intercourse with her on the following Friday. The Complainant decided that she would not submit to you again and as a result she did not return home after school on that Friday. She stayed with her friends and on the following Thursday her mother came and took her home. On 15 November 2019 when she was at home, you observed a fading love bite on her neck. You got angry after seeing the love bite and started punching her. When her mother went to work you told her to undress and lie down. The Complainant was having a swollen face and body pains due to your assault. You inserted your penis into her vagina while the Complainant was crying in pain. The Complainant initially reported only about the assault to the Police. Later she confided to her mother about what she had gone through and a report was lodged in respect of the incidents of rape. The evidence revealed that you have treated the Complainant like your wife, and you had been jealous when you saw a fading love bite on her neck. According to the Complainant's evidence you had refrained the Complainant from going anywhere and you had wanted her to stay home always. In her words she said that you treated her like she was your wife.
5. The maximum punishment for rape is life imprisonment. Tariff for rape against children is 11- 20 years imprisonment as per the decision in Aitcheson v State [2018] FJSC 29; CAV 0012.2018 (2 November 2018). In Aitcheson, the Supreme Court remarked;

“[24] The increasing prevalence of these crimes, crimes characterised 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.

[25] The tariff previously set in Raj v The State [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.”

6. Section 17 of the Sentencing and Penalties Act states;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

7. I am of the view that the offences pertaining to the three counts form a series of offences of the same or a similar character and therefore it would be appropriate to impose an aggregate sentence on you in respect of the first, second and third counts.

8. The Court must pass a total sentence which reflects all the offending behaviour and it should be just and proportionate. I am mindful that when an aggregate sentence is imposed the sentence should reflect the overall criminality involved and the sentence should be appropriately aggravated by the presence of the associated offences.

9. Rape on children has always been denounced by courts in Fiji. According to the statistics released by the Office of the Director of Public Prosecutions, 68% of the victims of sexual offences were children back-to-back in 2019 and 2020. In *Matasavui v State* [2016] FJCA 118; AAU0036.2013 (30 September) the Court of Appeal noted that;

“No society can afford to tolerate an innermost feeling among the people that offender of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilized entity.”

10. It should also be noted that sexual offences committed in domestic relationships must attract severe punishments. In *Alfaaz v State* [2018] FJSC 17; CAV0009.2018 (30 August 2018) the Supreme Court said;

“According to the statistics released by the Director of Public Prosecutions Office it appears that a number of rape victims as well as victims under the age of 18 years and victims in domestic relationships or relatives were also victims of other serious sexual offences. The rape of children is a very serious offence and it is very frequently prevalent in Fiji. The courts must impose harsh penalties dictated by the legislation. The courts should not leniently look at this kind of serious cases of rape of children of tender years when punishing the offenders.”

11. In that backdrop, I decide to pick 15 years as the starting point for the aggregate sentence having considered the objective seriousness of your offending in the associated offences.

12. Your offending reflects a significant degree of planning and manipulation. You have showed no respect for the Complainant as your stepdaughter. Your culpability is aggravated by gross abuse of trust as a stepfather. Further it appears that you used authority over her by taking advantage of your position in the

family. The Complainant was vulnerable by reason of her age and by her personal circumstances as a child who lived in a family with a stepfather. You targeted her vulnerability when she was isolated at home during the times that her mother was away. The Complainant was once compelled to run away from home to avoid sexual abuse by you. The evidence shows that you were treating the Complainant in a different manner and establishing a special relationship with her. Therefore, your behaviour clearly suggests grooming the Complainant as preparation for sexual activity. Harm to the Complainant is clearly evident from the emotional effects and life changes stated in the victim impact statement. Also, I have observed that in the last incident you unleashed violence on her by assaulting the Complainant. Subsequently you raped her while she was in pain due to the assault by you.

13. Those matters aggravate harm and culpability in your offending which would result in an upward adjustment of 4 years from the starting point of your aggregate sentence.
14. I have considered the written submissions filed by your counsel on mitigation. You are 38 years old and married with three children aged 10 years, 8 years and 6 years. You are a first offender. Your counsel requested that a lenient sentence be imposed on you. However as per your mitigation submissions only the absence of previous criminal records would carry some mitigating value.
15. For your previous clean records, I would deduct 2 years from the aggregate sentence.
16. The Complainant said in Court that she forgives you as it has already happened and because she feels sorry for her mother and for her siblings. It should be noted that sentences imposed for offences committed in domestic context should not be determined by the wishes expressed by the victims. Seriousness of the offences would be the determining factor and a victim is not responsible for the sentence as the Court imposes sentence on behalf of the wider public. The Court has to be

mindful that a plea for mercy from a victim could be induced by the fear of the offender or by threats made by or on behalf of the offender. Therefore, no room should be left to send a wrong message to the society that a sentence would be influenced by the wishes of a victim as it could encourage such threats to victims.

17. Having borne in mind the purposes of sentencing, and most importantly the significance of deterrence, I impose an aggregate sentence of 17 years imprisonment on you with a non-parole period of 15 years.

18. You have been in remand custody for nearly one year and two months. Pursuant to section 24 of the Sentencing and Penalties Act any period of time spent in custody is regarded as a period of imprisonment already served by the offender. Therefore, I consider that you have already served 1 year and 2 months of your aggregate sentence.

19. In the result you must serve a period of 15 years and 10 months' imprisonment with a non-parole period of 13 years and 10 months after the adjustment for the time spent in remand custody.

20. Further I impose a permanent domestic violence restraining order for non-molestation and for non-contact for the safety of the Complainant. The effects and consequences of the DVRO are explained to you.

30 days to appeal to the Court of Appeal.



At Suva

22 February 2021

**Solicitors**

Solicitors for the State: Office of the Director of Public Prosecutions

Solicitors for the Accused: Office of the Legal Aid Commission