

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 272 OF 2019S

STATE

vs

PITA TUNI VUNI

**Counsels : Ms. K. Semisi, Ms. U. Tamanikaiyaroi and Mr. J. Nasa for State
Mr. N. Tuifagalele for Accused**

Hearings : 8, 9, 10, 11 and 12 March, 2021.

Judgment : 15 March, 2021.

Sentence : 16 March, 2021.

SENTENCE

1. In a judgment delivered yesterday, you were found guilty and convicted on the following count, in the following information:

“Second Count

Statement of Offence

RAPE: *Contrary to Section 207 (1) and (2) (a) and (3) of Crimes Act 2009.*

Particulars of Offence

PITA TUNI VUNI, on 12 July 2019, at Nasau Village, Nabukelevu, Kadavu in the Southern Division, with his penis, penetrated the vagina of MTLN, a child under the age of 13 years.”

2. The brief facts as found by the court, after a defended hearing were as follows: On 12 July 2019, a Friday, the 8 year old child complainant left home at 6.30 am to attend her nearby school. She walked through the village green. She passed the village church, village church hall, the accused's house and went through four trees as shown in the village sketch plan, tendered as Prosecution Exhibit 2 (A). While walking through the trees, the accused suddenly came to her, put a white sack over her head and hit her left temple with a stone, thereby knocking her unconscious.
3. The accused later carried her to a bush, opposite the main road, near the village dump. The accused later placed her on the ground. She was lying down unconscious facing up. The accused then took off her clothes, and inserted his penis into her vagina, while she was still unconscious. Later the accused stood up, put on his clothes, and later wiped the blood off the complainant's bleeding vagina, with her underpants. The accused later left the crime scene. The complainant regained consciousness when the accused was putting on his clothes.
4. When the accused left, the complainant later put on her school uniform and went to school. She arrived at school at 8.30 am. After school, she went home, and told her mother about the incident. Later, they went to see the doctor at the village health centre. The complainant was medically examined by the doctor, and treated accordingly. She was admitted for a week at the health centre. The doctor reported the matter to police. An investigation was carried out. The accused had been tried and convicted in the High Court for raping the complainant.
5. The offence of rape carried a maximum sentence of life imprisonment (see Section 207 (1) of the Crimes Act 2009). Parliament therefore views the offence as a serious one. It violates the dignity of a person. It is an unwarranted intrusion into the privacy

of a person. It is an ultimate act of showing utter disrespect to a person. Therefore those who commit this offence, must expect a lengthy prison sentence to restore the balance, the harmony and atonement to the victim. For the rape of child, that is, anyone less than 18 years old, the tariff is a sentence between 11 and 20 years imprisonment. I refer to the authority of **Gordon Aitcheson v The State**, Criminal Petition CAV 012 of 2018, Supreme Court of Fiji. Of course, the final sentence will depend on the mitigating and aggravating factors.

6. The aggravating factors in this case, were as follows:

(i) **Serious Breach of Grandfather's Trust**. On 12 July 2019, the day of the incident, you were 49 years old. The female child complainant was 8 years old. There was an age difference of 41 years. You are related to the complainant. You were the complainant's grandmother's first cousin. She considered you as one of her grandfathers, as she called you "Tutu Pita". In a village setting, it was not unusual to have so many grandfathers and grandmothers, because of the extended family connections. In any event, in a village setting, it was customary for the elders to look after and care for the young. As an elder, it was your role to guide and care for your granddaughters, in the wide customary family connection sense. However, in this case, you saw fit to undermine and seriously breach the trust that the child complainant had in you, by raping her on 12 July 2019. You realize, you will have to serve a long custodial sentence to pay for your crime.

(ii) **The offence was premeditated and pre-planned**. On the facts of this case, it appeared you had been sexually attracted to the complainant since September 2018, when you attempted to indecently annoy her by pulling up her school uniform and gagged her mouth with your hands. The facts surrounding your sexual attack on the complainant showed premeditation and pre-planning. You waited for her early morning on 12 July 2019 after 6.30 am

on her way to school, jumped at her and put a sack over her head and knocked her unconscious by hitting her left temple with a stone. She blacked out. You then carried her across the main road into the bush and raped her, while she was unconscious. The extreme violence you used in executing your crime was uncalled for. You will have to be punished accordingly.

- (iii) **Rape of Children.** Unfortunately, this problem is becoming prevalent in our society, despite the heavy prison sentence passed by the courts for the rape of children. The court had said in the past, and will keep on saying that it will not tolerate the abuse of children in our society. As it had done in the past, and is now doing and will continue to do, it will pass heavy prison sentences for the rape of children, as a warning to others.
- (iv) By offending against the complainant, you had no regards to her right as a child, her right as a human being and her right to live a happy and peaceful life.
- (v) You had caused untold miseries to her family.

7. The mitigating factors are as follows:

- (i) At the age of 50 years, this was your first offence;
- (ii) You had been remanded in custody since 22 July 2019, that is, approximately 1 year 8 months ago.

8. Section 4 (1) of the Sentencing and Penalties Act 2009 reads as follows:

“4. — (1) The only purposes for which sentencing may be imposed by a court are —

- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;***
- (b) to protect the community from offenders;***
- (c) to deter offenders or other persons from committing offences of the same or similar nature;***

- (d) *to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
- (e) *to signify that the court and the community denounce the commission of such offences; or*
- (f) *any combination of these purposes.”*

9. As a judicial officer, I had presided over numerous “rape” trials in the Magistrate Courts from 1994 to 2009, and again in the High Court from 2009 to 2021. At first, “rape” trials were held because of complaints from adult complainants. In recent years, I had witnessed and presided over numerous rape trials involving young children. Sexual attacks on children are in fact an attack on the future and wellbeing of this country. This is because the children are the future of this country. To protect the children of this country, the time has come to impose the maximum sentence available in law, as a deterrence to others. This is especially so in this case because it involved a premeditated attack on an 8 year old unsuspecting child and the extreme violence used was uncalled for.
10. I therefore, given what is said above, and taking into account the aggravating and mitigating factors, impose the following sentence:
- (i) Count No. 2 - Rape : Accused - Life Imprisonment.
11. Mr. Pita Tunu Vuni, for violently raping the 8 year old child complainant on 12 July 2019, at Kadavu in the Southern Division, I sentence you to life imprisonment, with a non-parole period of 20 years imprisonment, effective forthwith.
12. The name of the child complainant is permanently suppressed to protect her privacy.

13. In addition to the above, a permanent domestic violence order with standard non-molestation conditions is issued for the safety of the complainant. This order will remain subject to the orders of this court.

14. You have 30 days to appeal to the Court of Appeal.



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JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : N. Tuifagalele, Barrister and Solicitor, Suva.