IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC. 123 of 2019

BETWEEN : **STATE**

AND : **ÌSIRELI SOVAU**

Counsel : Mr. Seruvatu for the State
: Ms. Reddy for the Accused

Sentence : 13th October 2021

SENTENCE

1. Mr. Isireli Sovau, You pleaded guilty to one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Act which carries a maximum penalty of life imprisonment and one count of Indecent Assault, contrary to Section 212 (1) of the Crimes Act, which carries a maximum penalty of five years imprisonment. The particulars of the offences are that;

FIRST COUNT

Statement of Offence

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

Particulars of Offence

ISIRELI SOVAU *on the 27th day of July, 2019 at Nadi, in the Western Division, penetrated the vagina of* ***MICHELLE PAULINE VERONICA SMITH*** *with his tongue, without her consent.*

SECOND COUNT

Statement of Offence

INDECENT ASSAULT: *Contrary to Section 212 (1) of the Crimes Act 2009.*

Particulars of Offence

ISIRELI SOVAU *on the 27th day of July, 2019 at Nadi, in the Western Division, unlawfully and indecently assaulted* ***MICHELLE PAULINE VERONICA SMITH*** *by touching her breasts.*

2. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you to one count of Rape and one count of Indecent Assault.

3. According to the summary of facts, which you admitted in open court, you had gone to the complainant at around 4.15 a.m. on the 27th of July 2019. She was sleeping at that time. She had woken up, when she felt that you were trying to lift her skirt up. You had threatened her with a knife, saying that you had come to lick her vagina and if she shout, you will kill her. You had then removed her shorts and underwear, and started to penetrate her vagina with your tongue. You had told the complainant to shut up, when she pleaded you to stop it. While penetrating her vagina with your tongue, you had indecently and unlawfully pressed the breasts of the complainant. You are the step-uncle of the complainant. She was 14 years old at the time of this incident took place.

4. 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 child victim. Hence, I find the Rape of this nature is a very serious crime. In this case, the complainant was sexually abused by a person who is known to her. This form of sexual exploitation of children by the known adult is a serious offence.

5. The Fiji Court of Appeal in **Subramani v State [2018] FJCA 82; AAU0112.2014 (1 June 2018)** discussed the appropriate approach of sentencing the offenders of this nature, where the Fiji Court of Appeal held that:

"The offence of Rape of young person related to the appellant is a serious offence. In this case the complainant was 11 years old and the appellant was her grand uncle (her grandfather's brother). The authorities indicate that whilst rehabilitation is a factor to be considered when fixing a non-parole period, so also are deterrence, denunciation, condign punishment and community protection and expectations. The appropriate person to balance these objectives in each case is the sentencing judge. In the present case, given the age of the appellant, rehabilitation is not a particularly relevant matter whereas the expectations of the community and the protection of young girls should be reflected in both the head sentence and the non-parole term so as to send a strong signal that the counts will impose appropriate sentences in such cases."

6. 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, 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."

Purpose of the Sentence

7. In view of the serious nature and prevalence of the crimes of this nature, the main purpose of this sentence is founded on the principle of deterrence. It is a responsibility of the Court 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

8. Gates CJ in **Aitcheson v State (Supra)** held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period. The tariff for the Indecent Assault ranges from 12 months to 4 years. (***Ratu Penioni Rokota v. State [2002] FJHC 168; HAA 68J of 2002S (23 August 2002)State v Vuibau - Sentence [2019] FJHC 1033; HAC291.2017 (29 October 2019***).

9. The one count of Rape and one count of Indecent Assault are founded on the same series of offending. Therefore, I find it is appropriate to impose an aggregate sentence under Section 17 of the Sentencing and Penalties Act.

10. The complainant was fourteen years old when this incident took place. You had gone to the complainant while she was sleeping. You had then threatened her with a knife, telling her that you will kill her if she shout. You had then manipulatively executed your heinous plan of raping this young complainant when she was not in a position to escape or seek for help. Therefore, I am satisfied that this is a premeditated crime involving substantive amount of violence and threats. I accordingly find the level of harm and culpability in this offence is significantly high.

Starting Point

11. Having considered the seriousness of the crime, the purpose of the sentence, the level of culpability and harm, I select fourteen (14) years as the starting point.

Aggravating and Mitigating Factors

12. You have breached the trust that the complainant had in you as her step-uncle. Instead of caring and looking after this small young complainant, you manipulatively used her naivety in childhood to satisfy your lustful sexual gratification. The age difference between you and the complainant is substantially high. She was fourteen years old, and you were forty-seven years old when this offence took place. By committing this crime, you have exposed this fourteen-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.

13. The learned Counsel for the Defence in her mitigation submissions submitted your personal and family background, which I do not find any mitigatory value.

14. 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 pedophile and allowed you to be feely moved in the community. Therefore, I do not find your previous good character has any significant mitigatory value. Hence, you are only entitled to a meager discount for your previous good character.

15. You pleaded guilty to this matter at the first opportunity. Therefore, you are entitled to a substantive discount for your plea of guilty.

16. In view of the reasons discussed above, I increase five (5) years for the aggravating factors to reach an interim period of nineteen (19) years. In view of your previous good character, I give you one (1) year discount. I reduce further three (3) years for an early plea of guilty and reach fifteen (15) years imprisonment as your final sentence.

17. Having considered the seriousness of this crime, the purpose of this sentence, your age, and opportunities for rehabilitation, I find thirteen (13) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for thirteen (13) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

18. Accordingly, I sentence you for **fifteen (15) years** imprisonment as an aggregate sentence for the offence of Rape and Indecent Assault as charged. Moreover, you are not entitled to any parole for **thirteen (13) years** pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

19. You have been in remand custody for this case for nearly (5) 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 five (5) months as a period of imprisonment that you have already served.

20. Accordingly, the actual sentencing period is **fourteen (14) years and seven (7) months** imprisonment with a non-parole period of **twelve (12) years and seven (7) months.**

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

HIGH COURT OF FIJI
LAUTOKA

Thushara Rajasinghe
JUDGE

Solicitors : ***Office of the Director of Public Prosecutions for the State.***
: ***Legal Aid Commission, Lautoka for the Accused.***