

IN THE HIGH COURT OF FIJI
AT LABASA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 003 OF 2021

BETWEEN : STATE

AND : JONA SENAVOSA

Counsel : Ms E Thaggard for the State
Mr P Gade for the Accused

Date of Hearing : 18 November 2021

Date of Sentence : 3 December 2021

SENTENCE

- [1] The Accused has pleaded guilty to two counts of rape.
- [2] The incidents occurred at Dreketi, Vanua Levu. The first incident occurred in 2015. The Accused was 20 years old at the time. The victim was 6 years old and a Year One student.
- [3] The Accused and the victim are related. He is her uncle. At the time of the first incident they lived in the same settlement. He invited the victim to his home and undressed her. He penetrated her anus with his penis once. The victim did not report the incident to anyone.
- [4] The second incident occurred on 30 December 2020 at a school used as an evacuation centre during tropical cyclone Yasa. The victim was taking shelter at

the school with her parents. The Accused forced the victim into a toilet. He pulled down her shorts and underwear and penetrated her anus with his penis twice. The victim immediately reported the incident to her mother, who then filed a police complaint.

[5] The Accused was arrested. Under caution he made full admissions.

[6] Medical examination of the victim revealed two 1 cm in size cuts on the victim's anus.

[7] Rape is a serious offence. It is an offence that attacks both the victim's body and dignity. The offence can potentially cause serious psychological harm to the victim. The seriousness of the offence is reflected in the maximum sentence of life imprisonment provided by the Crimes Act.

[8] It must be said that rape of a child is the most abhorrent. Children are the most vulnerable members of our community. The impact of sexual abuse committed on children, like in this case, is significant. According to the counsellor's report, the victim has been traumatized by the incidents of abuse.

[9] In *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018), the Supreme Court stated:

[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 (20th 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.

[10] It is clear that in cases of rape of children, the main purpose of the sentence is to denounce the crime. I use an aggregate term of 14 years imprisonment as my starting point.

[11] The aggravating factors are:

1. The vulnerability of the victim due to her tender age.
2. Rape was repeated.
3. The victim had suffered physical and psychological harm.
4. The Accused was in a position of trust.

[12] For these factors I increase the sentence to 18 years imprisonment.

[13] The Accused is 22 years old and married with a child. He is also the caregiver for his elderly mother. However, his family or personal circumstances carry little mitigating value.

[14] I give weight to the Accused's young age and to the fact that he is a first time offender. His early guilty plea has saved court's time and resources and has also relieved the victim of the trauma of giving evidence in court. For these factors I give a discount of 3 years.

[15] The Accused is convicted and sentenced to an aggregate term of 15 years imprisonment.

[16] The Accused has already spent about 1 year in custody on remand.

[17] The remaining term for him to serve in prison is 14 years. I fix a non-parole period of 11 years.

[18] A permanent restraining order with standard non molestation conditions is issued against the Accused for the protection of the complainant.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused