

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 47 of 2021**

**STATE**

vs.

**ILIESA LEWADOKARA**

**Counsel:** Ms. U. Tamanikaiyaroi with Mr. L. Baleilevuka for the State  
Ms. R. Nabainivalu for the Accused

**Date of Hearing:** 25<sup>th</sup> and 26<sup>th</sup> April 2022

**Date of Closing Submission:** 27<sup>th</sup> April 2022

**Date of Judgment:** 06<sup>th</sup> May 2022

**Date of Closing Submissions:** 12<sup>th</sup> May 2022

**Date of Sentence** : 12<sup>th</sup> May 2022

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**SENTENCE**

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1. Iliesa Lewadokara, you have been found guilty and stand convicted for one count of Rape contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act, 2009 which carries a maximum sentence of life imprisonment.
  
2. As for the said count of Rape, the occasion on which you inserted your tongue to into the girl's vulva in the period from the 1<sup>st</sup> day of September 2020 to the 23<sup>rd</sup> day of September 2020, you were 60 years and the girl was 10 years of age. It was proved during the hearing that you had very cunningly invited the girl into your house and played a disc of a pornographic nature which you enjoyed and exposed the child to this pornographic movie. Then having necessarily stimulated some excitement of a sexual flavor in the immature complainant's mind you invited her to enact that what was seen. As she was reluctant you promised he money as an inducement and successfully got her to remove her clothes. Then having positioned her to a bend down posture you then indecently and unlawfully licked her vagina with your tongue sinking in to her vulva. However, as you embarked upon this lustful pursuit the intervention by an unexpected visitor to your house compelled you to abandon the carnal voyage. The girl was asked to dress up and hearing the call of an elderly neighbour the door was opened and thus the girl made her way out to the safety of her house.
  
3. This is a case of sexual exploitation of a young child by a known elder from her own neighbourhood. You were in a position of trust. The culture and the rich traditions of the Fijian society expects you to protect little children in the community and the elders enjoy the respect and veneration of the community. You taking advantage of this rich culture sexually exploited TM the victim. Sexual exploitation of children within their own neighbourhood by known elders has become a social menace. Therefore, I find this offending is a severe crime.

4. In view of the severe nature of the crimes of this nature, the primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of the Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community especially the children from offenders of this nature. A harsh and long custodial sentence is inevitable for offences of this nature to demonstrate the gravity of the offence and reflect that civilised society denounces such crimes without any reservation.
  
5. In the case of *State v. Tauvoli* [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

*“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”*
  
6. Gates CJ in *Aitcheson v State* ([2018] FJSC 29; CAV0012.2018 (2 November 2018)) held that

*“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.”*
  
7. As the law stands now the tariff for the Rape of a child is between 11 - 20 years' imprisonment period.

8. Rape is a physical invasion committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.
  
9. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, the victim always thinks about what Iliesa did to her when is alone at home, gets a headache regularly, is frightened and once when she saw him at Rups she had ran back home. Further the victim never use the route to the shop that she used to follow before the incident and use another route which is longer. Hence this crime has caused mental and psychological trauma and affected her self-confidence. Thus, the level of harm of this offence is significantly high. I also observe that at page 7 of the Victim impact Assessment Report the victim has addressed a letter to the Accused which is relevant in considering the psychological effect on her.
  
10. You have cunningly executed this crime when you saw that she was returning home alone, you invited her in and played an adult film and has promised to give her money. You have taken advantage of the innocence and the naivety of a little girl to fulfill your sexual desires. I accordingly find that the level of culpability is high in this crime.
  
11. As a known elder in the neighbourhood you have abused that trust and confidence she had in you as an elder. I consider these reasons as aggravating factors of this offence.
  
12. The learned Counsel for the Defence, in you mitigation submissions, submitted your personal and family background, which has no mitigatory value. You are now 62 years of age, a first offender and a person of previous good character. I also consider the fact that

there is no use of violence and not caused physical harm in committing this offence. Hence, you are entitled to a substantive discount.

13. In view of the reasons discussed above, I sentence you to a period of thirteen (13) year's imprisonment for the count of Rape for which you stand convicted.
14. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that an eight (08) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for eight (08) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### Head Sentence


15. Accordingly, I sentence you to a period of thirteen (13) years imprisonment for the count of Rape as charged and convicted. However, you are not entitled to parole for eight (08) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### Actual Period of the Sentence

16. You were in arrested for this case on 05 February 2021 and had been in remand until you were granted bail on 8<sup>th</sup> October 2021. You have been in custody for a period of nearly 8 months. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 8 months be considered as imprisonment that you have already served.
17. Accordingly, the actual sentencing period is twelve (12) years and four (04) months imprisonment with a non-parole period of seven (07) years and four (04) months.

18. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire



  
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**Justice K.M.G.H. Kulatunga**

**At Suva**

12<sup>th</sup> May 2022

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused