

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 334 OF 2020S

STATE

VS

TEVITA BOSE

**Counsels : Ms. K. Semisi and Mr. L. Baleilevuka for State
Ms. R. Bainivalu for Accused**

Hearings : 10, 11 and 12 May, 2022.

Judgment : 13 May, 2022.

Sentence : 16 May, 2022.

SENTENCE

1. In a judgement delivered on 13 May 2022, you were found guilty and convicted on the following counts in the following information:

"Count 1

Statement of Offence

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

Particulars of Offence

TEVITA BOSE on the 31st day of October, 2020 at Kadavu in the Eastern Division, penetrated the mouth of A.B with his penis, without the consent of the said A.B.

Count 2

Statement of Offence

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

Particulars of Offence

TEVITA BOSE on the 31st day of October, 2020 at Kadavu in the Eastern Division, had carnal knowledge of A.B, without the consent of the said A.B.”

2. The brief facts were as follows. On 31 October 2020, the date of the incident, the child male complainant was 14 years old. The accused was 35 years old. There was a 21 years age gap between the two. The accused was the child complainant's uncle. They resided in the same village in the island of Kadavu. On the afternoon of 31 October 2020, the accused and another bought a carton of beer from a shop in Vunisea. The accused and his friend later consumed the beer in the carton.

3. After 7 pm on 31 October 2020, the child male complainant was playing cards at home with his parents and others. After a while, he went outside the house to go to the washroom. He met the accused near the washroom. The accused later invited the complainant to his house to watch movies. They then went to the accused's house. At the accused's house, the accused promised the child complainant \$20 to buy "bongo" and for them to go to the nearby village hall. They then went to the village hall.

4. At the village hall, at the back, near the steps, the accused and the complainant were standing. The complainant said, the accused then forcefully pushed him under the floor of the village hall. The complainant said, the accused forcefully opened his mouth and inserted his penis into the same, without his permission. The complainant said, he then held his head with both hands, and thrust the same in a forward and backward motion, to enable him to suck his penis. He

said, he did not suck his penis, and he said, the accused knew he was not consenting to the same, at the time. The complainant said, the accused later inserted his penis into his anus, and moved forward and backward for about 3 minutes, without his consent. The complainant said, the accused knew he was not consenting to the above, at the time. You have been found guilty and convicted of the above rapes.

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 a 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) **Breach of an Uncle's Trust.** The child complainant was your nephew. In a village setting, you were supposed to look after him, counsel him and see that no harm comes to him. Yet you did the unthinkable. You enticed him to the village hall, with the offer to watch movies at home and the promise of \$20. You then pushed him under the village hall floor, and breached his trust in you by raping him twice. You must accept that you will have to be given a custodial sentence, as a warning to others.
 - (ii) **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 now is doing and will continue to do, it will pass heavy prison sentences for the rape of children, as a warning to others.

- (iii) By offending against the complainant, you had no regards to his right as a child, his right as a human being and his right to live a happy and peaceful life.
 - (iv) You had caused untold miseries to his family.
7. The mitigating factors were as follows:
- (i) At the age of 39 years, this was your first offence;
 - (ii) You had been remanded in custody from 4 November 2020 to 19 November 2021, that is, 1 year 15 days, while awaiting trial.
8. On count no. 1 (rape), I start with 12 years imprisonment. I add 5 years for the aggravating factors, making a total of 17 years imprisonment. For time already served while remanded in custody awaiting trial, I deduct 1 year 6 months, leaving a balance of 15 years 6 months. For being a first offender at 39 years, I deduct 2 years 6 months, leaving a balance of 13 years imprisonment.
9. On count no. 2 (rape), I repeat the process and sentence in count no. 1 above.
10. The summary of your sentences are as follow:
- (i) Count no. 1 - Rape : 13 years imprisonment
 - (ii) Count no. 2 - Rape : 13 years imprisonment.
11. Because of the totality principle of sentencing, I direct that the above sentences be made concurrent to each other, that is, a final sentence of 13 years imprisonment.
12. Mr. Tevita Bose, for sexually offending against your 14 year old nephew on 31 October 2020, at Kadavu in the Eastern Division, I sentence you to 13 years imprisonment, with a non-parole period of 11 years imprisonment effective forthwith.

13. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to signify that the court and the community denounce what you did to the 14 years old complainant on 31 October 2020, at Kadavu in the Eastern Division.
14. The 14 year old complainant's name is permanently suppressed to protect his privacy.
15. You have 30 days to appeal to the Court of Appeal.



Solicitor for State
Solicitor for Accused

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Office of the Director of Public Prosecution, Suva
Legal Aid Commission, Suva



Salesi Temo
JUDGE