

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 216 OF 2020

BETWEEN : STATE

AND : SAKIUSA SIRINATURAGA

Counsel : Ms K Semisi for the State
Mr T Varinava for the Accused

Date of Hearing : 29 – 30 June 2022

Date of Judgment : 18 July 2022

Date of Sentence : 26 July 2022

SENTENCE

[1] Following a trial the offender was convicted of six counts of sexual assault and two counts of digital rape against his stepdaughter. All charges were representative counts covering a period of five years of sexual abuse from 2015 till 2020. The abuse started when the victim was 7 years old. It started on the pretext of innocent touching and when the victim did not complain to anyone the offender moved on to commit serious sexual assault. He used the same modus operandi on every occasion. He removed the undergarments of the victim and rubbed his penis on top of her vagina until he ejaculated. On two occasions when the victim was about nine or ten years old the offender fondled the victim's vagina or vulva with his finger and committed digital rape.

[2] The victim suffered significant trauma. She experienced physical pain during the incidents. She felt helpless and confused. She was afraid to complain to anyone. In June 2020 her biological mother removed the victim from the possession of the offender through a court order. That is when the victim revealed to her

grandmother that the offender had sexually abused her. When she was medically examined her vaginal hymen was not intact.

[3] The maximum penalty for sexual assault is 10 years imprisonment. The tariff for serious sexual assault range from 2 years to 8 years imprisonment (*State v Abdul Khaiyum* [2012] FJHC 1274, *State v Epeli Ratabacaca Lala* [2012] FJHC 1414).

[4] The maximum sentence for rape is life imprisonment. In *Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015), the Supreme Court observed:

[21] The casting of the offence of rape in the Crimes Decree is such that no distinctions are drawn as to gravity of offending dependent on the object used to penetrate or of the orifice of the victim penetrated. No separate penalties are prescribed. Sufficient no doubt is the unwanted invasion, the violation of the person, the forcible intrusion into the privacy and body of another.

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

[24] The increasing prevalence of these crimes, crimes characterized 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.

- [6] The offender is 44 years old. Before he was remanded in custody he worked as an electrician. He has three children of his own. However, the only factor that mitigates his offence is his previous good character. Otherwise, he has expressed little remorse to qualify for discount in sentence.
- [7] The aggravating factors are disturbing. The victim was only seven years old when the offender started to sexually abuse her. The age gap between the offender and the victim was vast. As her stepfather he grossly breached her trust for his own selfish sexual gratification by rubbing his naked genitalia on her naked genitalia until he ejaculated on her. When he realized that she was not reporting he carried out a campaign of sexual assault for a period of five years.
- [8] On two occasions (counts 3 and 7) the offender digitally penetrated the victim's vagina or vulva with his finger while committing sexual assault on her (counts 2 and 6). These incidents form part of the same transaction.
- [9] For the two counts of digital rape I start with an aggregate term of 12 years imprisonment and add 6 years to reflect the aggravating factors and deduct 2 years for the mitigating factors.
- [10] For the six counts of sexual assault I start with an aggregate term of 4 years imprisonment and add 6 years to reflect the aggravating factors and deduct 2 years for the mitigating factors.
- [11] The offender is sentenced as follows:

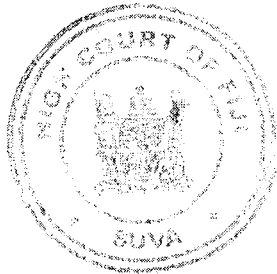
Two counts of digital rape – aggregate sentence of 16 years' imprisonment.

Six counts of sexual assault – aggregate sentence of 8 years' imprisonment.

[12] Both sentences are made concurrent. The total effective sentence is 16 years imprisonment, of which the offender has already served 2 years in custody on remand.

[13] The balance sentence for the offender to serve is 14 years' imprisonment. I fix a non-parole period of 11 years.

[14] The interim DVRO with standard no contact and non-molestation conditions is made permanent.



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