

**THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 50 OF 2021**

STATE

.vs.

JEMESA TUVUNIWAI

**Counsels:**     *Ms Lomaloma. M*     -     *for Prosecution*  
                         *Mr. Gade. P*                     -     *for Accused*

*Date of Trial: 04 – 06 July 2022*

*Date of Judgement: 07 July 2022*

*Date of Sentence: 08<sup>th</sup> July 2022*

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**SENTENCE**

1. **JEMESA TUVUNIWAI** you were charged on information with one count of Rape and one count of Sexual Assault, where you were acquitted by this Court on the first count of Rape and you pleaded guilty on your own volition to the second count of Sexual Assault, which stated, as below:

**COUNT 2**

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to **Section 210(1) (a)** of the **Crimes Act 2009**.

*Particulars of Offence*

**JEMESA TUVUNIWAI** on the 17th day of August 2021 at Wailevu Settlement, Taveuni in the Northern Division, unlawfully and indecently assaulted **ANAMARIA DICAU** by touching her vagina.

2. In pleading guilty on your own free will to the above mentioned count represented by Legal Aid, you understood the consequences of the guilty plea for the offence you have committed. This Court was satisfied that the guilty plea was informed and unequivocal and entered freely and voluntarily by you.
3. You agreed to the following summary of facts, when they were read to you in court on 07/07/2022. This Court was convinced that the agreed summary of facts satisfy all the elements for the offence you are charged with. You were found guilty on the 2<sup>nd</sup> count, as charged.

### **Summary of facts**

- On the 17<sup>th</sup> of August 2021, at around 10.15 am the complainant (Ana Maria Dica) left out for the Accused's farm house which was located about one and a half miles from her house in Qali Settlement, Taveuni.
- The Accused had told the complainant the previously that she should come to his farm house to harvest some cabbage.
- Upon reaching the Accused's farm house, the complainant saw the Accused cooking some dalo and she proceeded into the Accused's farm house.
- The complainant was standing by the window and started talking to the Accused's about the dogs. The Accused then came and stood beside her at the window.
- The complainant was wearing black shorts and a vest at the time.
- The Accused then touched the complainant on her thighs over her shorts and then his hand went into the complainant's shorts, inside her panty where he touched the complainant's vagina.
- The complainant left the farm house and the Accused asked for forgiveness from the complainant and asked her not to tell anyone.
- The complainant reported the matter to her father, Silivateri Talemisuva the same day of the incident where she told him what the Accused had done to her.
- On 18<sup>th</sup> of August 2021, the matter was then reported to the Taveuni Police Station by the complainant and her father, Silivateri Talemisuva.
- On the 19<sup>th</sup> of August 2021, the Accused was arrested and escorted to the Taveuni Police Station where the Accused was interviewed under caution and confessed to the allegation of sexual assault. The Accused was then charged thereafter.

4. In comprehending the gravity of the offence you have committed, I am mindful that the maximum punishment for the offence of Sexual Assault under **Section 210** of the **Crimes Act of 2009** is an imprisonment term of 10 years.
5. The accepted tariff for the count you have pleaded depends on the nature and circumstances under which Sexual Assault was committed, and the consequences entailing the commission of the offence to the victim and her family at large.
6. This Court also recognizes that to address the rapid increase of sexual offences in our community that shatters the fundamental fabric of our inclusive community, any punishment imposed by Court for this offence should have a reprehensible deterrent effect that could also send a profoundly strong signal to discourage potential wrong doers.
7. In imposing the appropriate punishment for your admitted guilt, this Court intends to follow the tariff regime pronounced for Sexual Assault in the case of **State v Epeli Ratabacaca Laca, HAC 252 of 2011**, where **Midigan J** in taking guidance from the sentencing guidelines available in the United Kingdom for Sexual Assault stipulated the suitable sentence under three categories, as below:

**“Category 1** *(the most serious)*

*Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.*

**Category 2**

- (i) *Contact between the naked genitalia of the offender and another part of the victim's body;*
- (ii) *Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
- (iii) *Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.*

**Category 3**

*Contact between parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)”.*

8. In this matter, this Court recognises that your conduct falls under Category 2 (ii) of the above pronouncement. Further, as demonstrated before this Court, you have sexually assaulted a young girl who was related to you who had great trust in you as an adult of her family. You lived in the farm that was owned by the father of this girl, where she had no fear to come to this farm alone knowing that you were residing there. Further, state has made reference to the victim impact statement made by the Prosecutrix that demonstrates the emotional and psychological trauma you have caused to her due to your conduct.
  
9. In assessing the objective seriousness of your offending in this matter, this Court considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. Having considered all these factors, I would pick a starting point of 48 months imprisonment against you.
  
10. In this matter, as aggravating factors state has brought to the attention of this Court that you have taken advantage of the vulnerability and defenselessness of an innocent child, where you had the responsibility to protect the victim, as she was your niece who trusted you. Considering this very important factor, this Court increases your sentence by 12 months.
  
11. In mitigation, though the defense counsel has informed Court that you are the sole breadwinner of your family, no evidence of having your own family was noticed in the evidence lead. However, your counsel has informed that you have maintained a good character until this matter which should be recognized. Further, your counsel has informed the court that you have entered an early guilty plea and that you regret your action on the day in question. You have also been supportive to the police during investigations after your arrest. By pleading guilty to the charge you have saved courts time and resources at a very early stage of the court proceedings. For this ground in mitigation, you should receive a discount in the sentence. In this regard, I give you a reduction of one third in your sentence.

12. The prosecution brings to the attention of this Court that you have been in custody for 2 months and 27 days. This period should be deducted from your sentence separately.
13. **JEMESA TUVUNIWAI, this Court** sentences you to 37 months imprisonment with a non-parole period of 30 months imposed under **Section 18 (1)** of the Sentencing and Penalties Act of 2009.
14. You have thirty (30) days to appeal to the Fiji Court of Appeal.



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Hon. Justice Dr. Thushara Kumarage

**At Labasa**

8<sup>th</sup> July 2022