

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 095 of 2022

STATE

vs.

RAFAELE RAKAI

Counsel: Ms. J. Fatiaki with Ms. P. Ram for the State
Ms. M. Singh with Mr. J. Buakula for Accused

Date of Hearing: 16th to 17th August 2022

Date of Closing Submission: 17th August 2022

Date of Judgment: 23rd August 2022

Date of Sentence: 26th August 2022

SENTENCE

1. Mr. Rafaele Rakai, on the 23rd of August 2022, this Court found you guilty of one count of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act and one count of Rape, contrary to Section 207 (1) (2) (c) and (3) of the Crimes Act and convicted of the same accordingly. In addition, on the 3rd of May 2022, you pleaded guilty to two counts of Rape contrary to Section 207 (1) (2) (b) and (3) of the Crimes Act and two counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. Being satisfied that you have fully comprehended the legal effect of your plea and that it was voluntary and free from force and influence; I now convict you of the said two offences of Rape and two offences of Sexual Assault as charged in the Information under Counts 3, 4, 5 and 6.

2. It was proved during the hearing that you had penetrated the vagina of the Complainant with your penis in 2019 when she was sleeping with her cousins in the night in the living room. You had then penetrated her mouth with your penis as well.
3. The Summary of Facts you admitted in Court states that on another occasion in 2019, you had approached the Complainant while she was sleeping and penetrated her vagina with your tongue. In the same year, you had pulled the Complainant's hand to touch your naked penis when she came to you asking for matches while you were in the bathroom. In 2020, you touched the backside of the Complainant when she was in the upstairs bedroom. On another occasion in 2020, you approached the Complainant while she was doing her homework and penetrated her vagina with your fingers. The Complainant was ten years old in 2019 and eleven years old in 2020.
4. This is a case of sexual exploitation of a young child by a known person within her dwelling environment. Sexual exploitation of children within their domestic environment has become a social menace. The social enigma of abusing children for sexual gratification needs to address promptly and effectively. Therefore, I find the objective seriousness of the crime extremely high.
5. 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 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 civilized society denounces such crimes without any reservation.
6. These six offences are founded on the same series of offences with similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.

7. The maximum penalty for Rape is life imprisonment. Gates CJ in **Aitcheson v State ([2018] FJSC 29; CAV0012.2018 (2nd of November 2018)** held that the tariff for the Rape of a child is between 11 - 20 years' imprisonment period.
8. The maximum penalty for Sexual Assault is ten years imprisonment. Justice Madigan in **State v Epeli Ratabacaca Laca - Sentence [2012] FJHC 1414; HAC252.2011 (the 14th of November 2012)** has expounded the tariff for the offence of Sexual Assault as between 2 years to 8 years imprisonment.
9. 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.
10. The Victim Impact Report states this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, this crime has shattered her self-confidence. Therefore, I find the level of harm in this offence is significantly high.
11. You had meticulously executed this crime when Complainant was alone and unable to escape or seek assistance. You had threatened her, stating that you would kill her inside the house if she informed someone about this incident. I accordingly find that the level of culpability is exceedingly high in this crime, requiring a starting point closer to the higher end of the tariff range.
12. Considering the serious nature of these offences, the purpose of the sentence, the level of harm and the level of culpability, I select 18 years as the starting point.
13. The Complainant is related to you. You are her Uncle. You had abused that trust and confidence she had in you as an elderly relative. The age difference between you and the Complainant is substantially high. You have exposed this child Complainant to sexual

activities by committing this crime at a very young age. I consider these reasons as aggravating factors of this offence.

14. In her mitigation submissions, the learned Counsel for the Defence submitted your personal and family background, which has no mitigatory value.
15. The learned Counsel for the Defence submitted that you are a first offender; hence, you are entitled to a substantive discount. I find that your previous good character, especially since you have not been tainted with any prior conviction for an offence of sexual nature, would have allowed you to freely move around in the family, including the children, without any suspicion of risk. The family had perceived you as a man of good character, not a child paedophile, and allowed you to be free with your young female family members. Moreover, there is no suggestion that you have significantly contributed to the community or have any reputation in the community as per Section 5 of the Sentencing and Penalties Act. Therefore, I do not find your previous good character has any significant mitigatory value. Hence, you are only entitled to a meagre discount for your previous good character.
16. You pleaded guilty to two counts of Rape and two counts of Sexual Assault at the first available opportunity. Nevertheless, the Complainant had to give evidence, recalling her traumatic ordeal. Yet, I find your early plea of guilty entitles a discount as you had shown a certain amount of remorse by admitting your guilty to those four counts.
17. In view of the reasons discussed above, I increased further three (3) years for the aggravating factors to reach twenty-one (21) years. Because of your previous character, I reduced one (01) year. I further reduced one year for your early plea of guilty. Accordingly, I reach nineteen (19) years imprisonment as your final sentence.
18. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find seventeen (17) years of the non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for seventeen (17) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Head Sentence

19. Accordingly, I sentence you to a period of nineteen (19) years imprisonment as an aggregate sentence for one count of Rape contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act, one count of Rape contrary to Section 207 (1) (2) (c) and (3) of the Crimes Act, two count of Rape contrary to Section 207 (1) (2) (b) and (3) of the Crimes Act and two counts of Sexual Assault contrary to Section 210 (1) (a) of the Crimes Act. Moreover, you are not entitled to parole for seventeen (17) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

20. You have been in remand custody for this case for nearly five (5) months and ten days before the sentence as the Court did not grant you bail. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider six (6) months as a period of imprisonment you have already served.
21. Accordingly, the actual sentencing period is **eighteen (18) years and six (06) months** imprisonment with a non-parole period of **sixteen (16) years and six (06) months**.
22. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a Permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Sections 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court, or any other competent Court, is varied or suspended. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.

23. Thirty (30) days to appeal to the Fiji Court of Appeal.



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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

26th August 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.