

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No.: HAC 187 of 2018**

**STATE**

**V**

**JOSESE SESE**

**Counsel** : Mr. U. Lal for the State.  
: Ms. L. Taukei for the Accused.

**Dates of Hearing** : 18, 19, 22, 23 August, 2022

**Closing Speeches** : 24 August, 2022

**Date of Judgment** : 25 August, 2022

**Date of Sentence** : 08 September, 2022

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**SENTENCE**

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*(The name of the victim is suppressed she will be referred to as "L.T")*

1. In a judgment delivered on 25<sup>th</sup> August, 2022 this court found the accused guilty and convicted him for one count of rape and two counts of indecent assault.
2. The brief facts were as follows:

The accused is the maternal uncle of the victim, in 2015 the victim was 11 years old, was residing at Nagado village with her mother. The accused also resided in the same village.

3. In November, 2015 at around midday the victim was in her kitchen cooking and she was standing with her back towards the door. The accused came and stood behind her, with his right hand he touched the victim's right breast from under her arm for 2 minutes. After this, the accused lifted the victim's dress and with his left index finger poked her vagina. The victim knew the accused had poked her vagina because she felt pain. Before leaving the accused threatened the victim not to tell anyone about what he had done to her otherwise he will chop her with a knife.
4. In January, 2017 the victim was at one of her uncle's house with her sisters watching movies. The accused came into the sitting room where the victim was standing he came and touched the victim's left breast with his right hand. When the accused did this one of her sister's screamed and the accused left. Before leaving the victim was again threatened by the accused that he will chop her with a knife if she told anyone.
5. The matter was reported to the police. An investigation was conducted, the accused was arrested, caution interviewed and charged.
6. The state counsel filed sentence submissions and victim impact statement whereas the defence counsel filed mitigation submissions for which this court is grateful.

7. The following personal details and mitigation was presented on behalf of the accused:
- a) The accused is now 63 years of age;
  - b) First offender;
  - c) He is currently separated with 5 children; and
  - d) Is a Farmer.
8. I accept in accordance with the Supreme Court decision in *Anand Abhay Raj v The State, CAV 0003 of 2014 (20 August, 2014)* that the personal circumstances of an accused person has little mitigatory value in cases of sexual nature.

### **AGGRAVATING FACTORS**

9. The aggravating factors are:
- a) Breach of Trust  
The accused is the maternal uncle of the victim and also they were leaving in the same village. The accused grossly breached the trust of the victim by what he did to her including the sanctity of the relationship that existed between the accused and the victim.
  - b) Age Difference  
The victim was 11 years at the time of the offending whereas the accused was 56 years of age. The age difference is substantial the accused being a matured adult should have exercised care and restraint.

c) Vulnerable Victim

The victim was vulnerable, unsuspecting and helpless the accused took advantage of this and sexually abused her.

d) Exposing children to sexual abuse

The accused had exposed the victim to sexual abuse and had exposed her to an unexpected experience which she will not be able to forget easily.

e) Victim Impact Statement

According to the victim impact statement the victim has suffered psychological and emotional harm as follows:

- (i) Is scared whenever she sees the accused or hears his voice;
- (ii) Lives in fear after she was threatened by the accused;
- (iii) Is now afraid of talking to a male.

f) Prevalence of Offending

There is an increase in sexual offence cases by offenders who are known to the victim and are matured adults. The victim was supposed to be safe in her kitchen and one her uncle's house but this was not to be by what the accused had done.

## **TARIFF**

### Rape

10. The maximum penalty for the offence of rape is life imprisonment which means this offence falls under one of the most serious category of offences. The Supreme Court of Fiji in the judgment of *Gordon Aitcheson vs. The State, Criminal Petition No. CAV 0012 of 2018 (2 November, 2018)* has

confirmed that the new tariff for the rape of a juvenile is now a sentence between 11 years to 20 years imprisonment.

### Indecent Assault

11. The maximum penalty for the offence of indecent assault is 5 years imprisonment. The accepted tariff is a sentence between 1 to 4 years imprisonment (*Rokota vs. The State, criminal appeal no. HAA 0068 of 2002*).
12. Section 17 of the Sentencing and Penalties Act states:

*“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*
13. I am satisfied that the offences for which the accused stands convicted are offences founded on the same facts and are of similar character. Therefore taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence of imprisonment for the three offences.
14. Rape of a child is one of the most serious forms of sexual violence and offenders should be dealt with severely. Children are entitled to live their lives free from any form of physical or emotional abuse. When family members sexually abuse children, violating the Domestic Violence Act, they should not expect any mercy from this court. The punishment ought to be such that it takes into account the society’s outrage and

denunciation against such conduct. A long term imprisonment becomes inevitable in such situations.

15. There has been an increase in sexual offences involving offenders who are known to the victim and are mature adults. It is shocking to note the manner in which the accused had committed the offence on the victim.
16. The Supreme Court in *Mohammed Alfaaz v State* [2018] FJSC 17; CAV0009.2018 (30 August 2018) has stated the above in the following words at paragraph 54 that:

*“It is useful to refer to the observation expressed by the Fiji Court of Appeal in *Matasavui v State*; Crim. App. No. AAU 0036 of 2013: 30 September [2016] FJCA 118 wherein court said that “No society can afford to tolerate an innermost feeling among the people that offenders of sexual offenders of sexual crimes committed against mothers, daughters and sisters are not adequately punished by courts and such a society will not in the long run be able to sustain itself as a civilised entity.”*

17. Madigan J in *State v Mario Tauvoli* HAC 027 of 2011 (18 April, 2011) said:

*“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 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.”*

18. The Supreme Court in *Felix Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015) mentioned a long list of factors that should be considered in punishing the offenders of child rape cases. Those factors would include:
- (a) *whether the crime had been planned, or whether it was incidental or opportunistic;*
  - (b) *whether there had been a breach of trust;*
  - (c) *whether committed alone;*
  - (d) *whether alcohol or drugs had been used to condition the victim;*
  - (e) *whether the victim was disabled, mentally or physically, or was specially vulnerable as a child;*
  - (f) *whether the impact on the victim had been severe, traumatic, or continuing;*
  - (g) *whether actual violence had been inflicted;*
  - (h) *whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*
  - (i) *whether the method of penetration was dangerous or especially abhorrent;*
  - (j) *whether there had been a forced entry to a residence where the victim was present;*
  - (k) *whether the incident was sustained over a long period such as several hours;*
  - (l) *whether the incident had been especially degrading or humiliating;*
  - (m) *If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*

- (n) Time spent in custody on remand.*
  - (o) Extent of remorse and an evaluation of its genuineness;*
  - (p) If other counts or if serving another sentence, totality of appropriate sentence.*
19. After assessing the objective seriousness of the offences committed I take 11 years imprisonment (lower range of the scale) as the starting point of the aggregate sentence. The sentence is increased for the aggravating factors. The personal circumstances and family background of the accused has little mitigatory value. However, I note that the accused is a first offender who has come to court with a clean record. In this regard, I reduce the sentence for good character and his other mitigation.
20. I note from court file that the accused was remanded for 3 months and 7 days, in exercise of my discretion I deduct 3 months and 10 days in accordance with section 24 of the Sentencing and Penalties Act the remand period is deducted as a period of imprisonment already served. The final aggregate sentence is 14 years, 8 months and 20 days imprisonment.
21. Under the aggregate sentence regime of section 17 of the Sentencing and Penalties Act the final sentence of imprisonment for one count of rape and two counts of indecent assault is 14 years, 8 months and 20 days imprisonment.
22. This court is satisfied that the term of 14 years, 8 months and 20 days imprisonment does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each offence.



23. Mr. Sese you have committed serious offences against your niece who you were supposed to protect and care. The victim was unsuspecting and vulnerable. You cannot be forgiven for what you have done to the victim.
24. As a result of your actions as per the victim impact statement the victim was psychologically and emotionally affected to the extent that she continues to be afraid of the accused and is scared to talk to men.
25. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim (aged 11 years at the time of the offending) who was the accused's niece compels me to state that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
26. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation. A non-parole period too close to the final sentence will not be justified for this reason.
27. Considering the above, I impose 12 years and 8 months as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case.

28. In summary I pass an aggregate sentence of 14 years, 8 months and 20 days imprisonment with a non-parole period of 12 years and 8 months to be served before the accused is eligible for parole. Due to the closeness of the relationship between the accused and the victim a permanent non-molestation and non-contact orders are issued to protect the victim under the Domestic Violence Act.

29. 30 days to appeal to the Court of Appeal.



*Sunil Sharma*  
Sunil Sharma  
Judge

**At Lautoka**

08 September, 2022

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**